

1 JUDICIAL COUNCIL OF CALIFORNIA
 2 ADMINISTRATIVE OFFICE OF THE COURTS
 3 CENTER FOR FAMILIES, CHILDREN & THE COURTS
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 5 RE: DRAFT GUIDELINES AND)
 6 RECOMMENDED PRACTICES FOR)
 7 IMPROVING THE ADMINISTRATION OF)
 8 JUSTICE IN DOMESTIC VIOLENCE)
 9 CASES)
 10 _____)

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12 PUBLIC HEARING
 13 TRANSCRIPT OF PROCEEDINGS

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15 _____
 16 WEDNESDAY, MARCH 21, 2007

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18 HIRAM W. JOHNSON STATE OFFICE BUILDING
 19 MILTON MARKS CONFERENCE CENTER AUDITORIUM
 455 GOLDEN GATE AVENUE
 20 SAN FRANCISCO, CALIFORNIA 94102-3660

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24 REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR
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1 SAN FRANCISCO, CALIFORNIA; WEDNESDAY, MARCH 21, 2007

2 10:33 a.m.

3 --oOo--

4 WELCOME AND OPENING REMARKS BY JUDGE KAY

5 JUDGE KAY: Good morning. I'm Larry Kay,
6 Retired Presiding Justice for the Court of Appeal for
7 the First Appellate District, Division Four; and chair
8 of the Judicial Council's Domestic Violence Practice and
9 Procedure Task Force.

10 On behalf of the Task Force, I'd like to
11 welcome all of you to our second public hearing. One
12 week ago today we held our first public hearing at the
13 Ronald Reagan Courthouse in Los Angeles. There we
14 received comments and testimony regarding our recently
15 released Draft Guidelines and Recommended Practices in
16 Domestic Violence Cases. Today we seek further input in
17 concerning these draft guidelines.

18 I'm pleased to be joined today by the following
19 Task Force members:

20 Starting on my far left I would like to
21 introduce the following: The Honorable Mary Ann Grilli,
22 Judge of the Santa Clara County Superior Court, and
23 Chair of the Restraining Order Best Practices Working
24 Group.

25 The Honorable George A. Miram, Immediate Past

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1 Presiding Judge of the San Mateo County Superior Court.

2 The Honorable Jerilyn L. Borack, Judge of the
3 Sacramento County Superior Court.

4 The Honorable William A. MacLaughlin, Immediate
5 Past Presiding Judge of the Los Angeles County Superior
6 Court, with whom I served on the Judicial Council.

7 Tressa Kentner, Chief Executive Officer of the
8 San Bernadino Superior Court.

9 Skipping Bobbie for a minute, the Honorable
10 Katherine A. Feinstein, Judge of the San Francisco
11 County Superior Court.

12 The Honorable Dean Stout, Presiding Judge of
13 the Inyo County Superior Court.

14 Rebecca S. Riley, Judge of the Ventura County
15 Superior Court.

16 Jeffrey S. Bostwick, Judge of the San Diego
17 County Superior Court.

18 And Deborah Andrews, Judge of the Los Angeles
19 County Superior Court.

20 Joining us a little later will be Sharon
21 Chatman, Judge of the Santa Clara County Superior Court,
22 who's been delayed for a short time.

23 These proceedings are being transcribed and
24 videotaped and will be available for Task Force members

25 who could not be with us today.

6

1 I would like to also introduce staff of the
2 Administrative Office of the Courts Center for Families,
3 Children and the Courts, here with us today to assist in
4 these proceedings. Staff please be recognized as I call
5 your names. It looks like you're not all sitting in one
6 place.
7 Ms. Tamara Abrams, Senior Attorney.
8 Ms. Julia Weber, Supervising Attorney.
9 Ms. Penny Davis, Senior Court Analyst.
10 Ms. Amelia Elgas, Administrative Coordinator.
11 Ms. Carly Lindberg, secretary.
12 And Ms. Bobbie Welling, Supervising Attorney
13 and lead staff to the Task Force on my right.
14 Also present is Ms. Lynn Holden, Public
15 Relations Officer.
16 The Domestic Violence Practice and Procedures
17 Task Force is charged with recommending changes to
18 improve court practices and procedures in cases
19 involving domestic violence in the following key areas:
20 Court and community leadership; restraining
21 orders; entry of restraining orders into the Domestic
22 Violence Restraining Order System, called DVROS; a
23 database within the California Law Enforcement
24 Telecommunications System known as CLETS; firearms
25 relinquishment; and criminal law procedures in domestic

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1 violence cases.
2 As Chief Justice George stated when he
3 initially appointed the Task Force, our goal is to
4 ensure fair, expeditious and accessible justice for
5 litigants in these critical cases and to promote both
6 safety and perpetrator accountability.
7 The Task Force charge includes as well the
8 review and implementation, as appropriate, of
9 court-related recommendations contained in the June 2005
10 report to the California Attorney General from the Task
11 Force on local criminal justice response to domestic
12 violence entitled, "Keeping the Promise: Victim Safety
13 and Batterer Accountability."
14 The full charge of the Task Force and complete
15 listing of its members are contained in handouts
16 available along with copies of the agenda on the
17 registration table just outside the auditorium.

18 Over the last 18 months, the Task Force has
19 developed a series of Draft Guidelines and Recommended
20 Practices designed to address key issues. It is these
21 proposals which are the subject of our hearing today.
22 Speakers present represent -- are
23 representatives from a wide away of justice system
24 entities, each with a different perspective. It is a
25 guiding principle of the work of this Task Force that

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1 improving the way domestic violence cases are handled
2 necessarily involves communication and collaboration
3 among the various components of the system. We are
4 pleased to have individuals with the varying
5 perspectives with us here today.
6 Before we turn to the speakers' comments, I'm
7 pleased to introduce you to the Honorable David Ballati,
8 with the welcoming remarks.
9 Judge Ballati is the Presiding Judge of the San
10 Francisco Superior Court and a member of Judicial
11 Council's Trial Court Presiding Judge's Advisory
12 Committee. Judge Ballati's court has long been in the
13 forefront of developing local best practices relating to
14 domestic violence and is both a Criminal Domestic
15 Violence Court a Unified Family Court.
16 Judge Ballati.
17 --oOo--
18 OPENING REMARKS BY JUDGE BALLATI
19 JUDGE BALLATI: Justice Kay and members of the
20 Task Force, thank you for inviting me to make some
21 welcoming remarks at this second public hearing on the
22 Task Force's Guidelines in Recommended Practices for
23 Improving the Administration of Justice in Domestic
24 Violence Cases.
25 As the Presiding Judge of the San Francisco

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1 County Superior Court and as a member of the Statewide
2 Trial Court Presiding Judges Advisory Committee, I know
3 how important the work of this Task Force is in
4 improving the administration of justice in domestic
5 violence case.
6 The speakers assembled here today and the
7 members of this Task Force are preeminent in the subject
8 matter of domestic violence. The diverse, thoughtful
9 and enlightened comments which this Task Force has
10 received at the public hearing in Los Angeles last week

11 and which you will receive today here in San Francisco
12 will influence the guidelines and recommended practices
13 for trial courts relating to domestic violence cases.

14 I welcome and appreciate the efforts of
15 everyone involved in this project, because the San
16 Francisco Superior Court, like all superior courts,
17 wants to continue to improve its handling of domestic
18 violence cases for all involved.

19 With the ever-growing number of
20 semi-represented litigants, many of whom are confronted
21 with the issue of domestic violence, the challenge in
22 our courts, whether criminal, family, dependency or
23 other, is to develop practices and procedures which
24 protect their safety and other interests with the same
25 vigilance that we protect the rights of those accused of

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1 domestic violence.

2 The establishment of guidelines and recommended
3 practices should result in extending the protections
4 beyond the intended victim of domestic violence to those
5 who are the unintended victims, like children, family
6 members, loved ones, and other cohabitants who are
7 impacted by domestic violence.

8 The work of this Task Force is important and
9 significant. The contributions made today will be
10 meaningful. The guidelines and recommended practices
11 will have a lasting impact on how our trial courts will
12 handle issues involving allegations of domestic
13 violence.

14 Thank you very much for holding this public
15 hearing.

16 JUDGE KAY: Thank you, Judge Ballati.

17 Our schedule today is as follows: First
18 segment, from 10:45 to 11 a.m., focuses on the
19 importance of court and community leadership in domestic
20 violence cases.

21 The segment will be followed by restraining
22 order procedures from 11 a.m. to noon.

23 We will then break for lunch and reconvene
24 promptly at 12:30.

25 The next portion, on the enforcement of orders

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1 for relinquishment of firearms, will be from 12:30 to
2 1:30 p.m.

3 The session concerning ways to improve practice

4 in criminal domestic violence cases will be from 1:30 to
5 3:00.

6 We will conclude the hearing by taking
7 testimony from members of the general public from
8 3 o'clock till 3:30. If necessary, this period will be
9 extended until 4 p.m. to afford an opportunity for
10 additional members of the public to address the Task
11 Force.

12 When the public testimony is concluded, the
13 hearing will be adjourned.

14 If you are interested in presenting testimony
15 during the public input session and you have not already
16 done so, please sign in on the sheet provided for that
17 purpose at the registration table outside the
18 auditorium. I will be calling on those of you who wish
19 to present public testimony in the order in which you
20 have signed in.

21 We'll make every effort to accommodate all
22 witnesses who wish to speak to the Task Force during
23 this session, but I may need to limit the time allocated
24 for each speaker based on the number of people who sign
25 up.

12

1 If we're not able to get to all of you before
2 we have to adjourn the hearing, we encourage you to
3 submit written testimony to the Task Force, which we
4 will carefully consider as part of our evaluation of how
5 to improve the administration of justice in domestic
6 violence proceedings.

7 We now turn to the substantive portion of our
8 agenda. For each segment of the agenda, I will ask that
9 all speakers come forward and sit in the reserved seats
10 in the first row in the order of their appearance, and I
11 will introduce you as you come forward.

12 I would like to call on our first speaker,
13 Judge -- excuse me, Ms. Nancy O'Malley. Ms. O'Malley is
14 Chief Assistant District Attorney of the Alameda County
15 District Attorney's office.

16 Ms. O'Malley, together with District Attorney
17 Tom Orloff, led the effort to bring a federal grant to
18 Alameda County that established the Family Justice
19 Center.

20 The Center is a pilot program under the
21 President's Family Justice Center Initiative designed to
22 provide comprehensive services for victims of domestic
23 violence under one roof.

24 Services are provided by victim advocates, law
25 enforcement officers, prosecutors, probation officers,

1 forensic medical professionals, and civil legal
 2 attorneys. Also representatives from community-based
 3 organizations.

4 Ms. O'Malley has been an advocate for
 5 improvements in the criminal domestic violence area for
 6 many years.

7 And before Ms. O'Malley begins, I would just
 8 like to say that justice -- Judge Barbara Miller from
 9 the Alameda County Superior Court was also planning to
 10 address us in this segment but has been taken ill with
 11 the flu.

12 Ms. O'Malley.

13 --oOo--

14 COMMENTS BY MS. NANCY O'MALLEY

15 MS. O'MALLEY: Good morning Your Honor and
 16 distinguished members of the Committee and the Task
 17 Force, and Ms. Welling.

18 It's my pleasure to be here this morning to
 19 address the Task Force and the Commission. I know
 20 several of you in that I both serve on the Violence
 21 Against Women Educational Project as well as the
 22 Judicial Council Criminal Law Advisory Committee, and we
 23 have been looking at this issue for quite some time.

24 I would like to take a moment or the first few
 25 moments to talk about what Judge Miller was going to

1 speak to you about, and that is the leadership of the
 2 court in Alameda County in improving access and services
 3 for victims of domestic violence.

4 There are three specific areas that I would
 5 like to address that she would if she would here.

6 One of them is that several years ago, and
 7 before the Task Force by the Attorney General was
 8 formed, we took a look at how services were being
 9 delivered in Alameda County. And there were a few
 10 things that we realized, one of which was, in the civil
 11 court where litigants are most likely pro per, that
 12 there was -- there really was a lack of understanding by
 13 litigants on how to access restraining orders. There
 14 was a lot of intimidation that went on in those courts
 15 without any support for either side. There was a lot of
 16 confusion. And sometimes that confusion will give the
 17 benefit of the doubt. That confusion might have led to
 18 what appeared to be intimidation.

19 In any event, what Judge Miller did when she
 20 was presiding judge is that she established several
 21 community courts that were domestic violence focused in
 22 the civil arena. And when she did that, through her

23 leadership and working and reaching out to the District
24 Attorney's office, to my office, we also started sending
25 our victim witness advocates, who are advocates that

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1 have access to resources such as victims of crime
2 funding for victims of domestic violence, also our
3 victim advocates and an investigator within my office,
4 who worked on stalking and threat management cases, were
5 present in the court.

6 And out of that, the first day that we had the
7 court in Oakland at the Rene C. Davidson courthouse was
8 a very busy calendar, and I went down in the morning and
9 everybody was lining up, including my staff, and about
10 an hour later, they had arrested five individuals who
11 had literally violated restraining orders before they
12 left the courthouse.

13 One woman was hit in the elevator after she
14 walked out from the court, one woman was hit right on
15 the steps of the courthouse, and she came back in, and
16 by the time our investigators went out to see where the
17 perpetrator was, he had already keyed her car and
18 slashed all four of her tires for the fourth time in a
19 month.

20 So you can imagine the importance that we all
21 saw immediately of the role of both the District
22 Attorney's office and the contribution we could make as
23 well as the importance of having a court with support
24 for litigants.

25 And what Judge Miller did was that she started

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1 providing case management support. The court made that
2 commitment just like they do in drug court, so that
3 there is a case manager and there are other legal
4 supports from the court that they're to provide and
5 answer questions for litigants.

6 The other thing that Judge Miller implemented
7 was to create a countywide database that pulls from all
8 of the existing databases and contains all of their
9 restraining orders issued in the court protective
10 orders. It comes from the civil restraining order
11 database, from the criminal courts database, from every
12 other -- from the emergency protective order databases,
13 that are inputted by each police agency.

14 So at any time law enforcement or the courts or
15 the District Attorney or the people who have

16 appropriate -- the appropriate people who have access to
17 those databases can look and see whether or not there's
18 a restraining order, a protective order in place.
19 That's essential for all of the issues you'll
20 talk about today, both in obtaining restraining orders,
21 in firearm relinquishment, and in the enforcement or --
22 enforcement after violation of restraining orders.
23 And what we've also been able to do is identify
24 really a true number of how many restraining orders that
25 are being issued in the county. We wanted to make sure

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1 that we weren't doing duplicative work, and so what we
2 are able to do now is, we know when there is a civil
3 restraining order issued in place for domestic violence,
4 then it's not often needed to have a criminal protective
5 order, which, as you know, only exists as long as the
6 case exists. And the civil restraining orders have a
7 much more defined period of time.
8 We also know that when we look at the number of
9 criminal protective orders that are issued now, which is
10 somewhere around 2500 a year, and compare them to the
11 civil domestic violence restraining orders, which is
12 someplace around 3500 a year, that we have very little
13 overlap, which makes it a much more efficient process.
14 And then lastly, one of the things that Judge
15 Miller did through working with us as we created our
16 Family Justice Center was to be able to allow the
17 litigants at the Family Justice Center to fax file civil
18 restraining order applications for -- on behalf of the
19 victims of domestic violence who were seeking services
20 at the Family Justice Center.
21 And in doing so, it stopped that litigant or
22 that client from having to then take paperwork, go over,
23 try to find someone to go with her or him and seek the
24 services.
25 And it is in those areas that we have seen a

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1 tremendous improvement in the court's efficiency of how
2 restraining orders are dealt with. I can tell you now
3 that throughout the court there are six different
4 community court restraining order calendars, one in
5 each -- what are old judicial districts. And in each of
6 those courts there's also the case managers, there are
7 District Attorney victim witness advocates, and there's
8 a DA inspector there to help provide safety planning and

9 other tools and resources that victims would need to
10 stay safe.

11 I -- as Judge Kay indicated, that I was
12 involved from the very beginning of the creation of the
13 Alameda County Family Justice Center. And that's
14 another place in which the role and the importance of
15 taking the community leadership to combatting domestic
16 violence.

17 I'll give you the -- one of the highlights
18 first, and then I'll back up and give you a little
19 history. And that is that in 2001 -- excuse me, about
20 in 2000, the Department of Justice, who oversee the
21 domestic violence death review committees throughout the
22 state contacted me, and a very wise person pointed out
23 to me that in Alameda County, although we have always
24 been out in the forefront of dealing with these types of
25 issues, that we weren't doing a very good job, in their

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1 opinion, at least in her opinion, and she was right, in
2 how we were dealing with evaluating domestic violence
3 deaths and the impact we were having as a committee on
4 that community.

5 And so at her urging, I stepped in with another
6 individual, and we took over the committee as the
7 District Attorney's office. And from that point, we
8 had -- we were able to bring in law enforcement support,
9 and after that we brought in the community partners.
10 And our domestic violence death review committee went
11 from a committee of about three or four steady people to
12 about 25 who met regularly.

13 In 2000, there were 26 deaths as a result of
14 domestic violence in Alameda County. In 2005, there
15 were six. And sadly, three of them were teenagers, one
16 of whom was a young man who killed his girlfriend in
17 front of the high school before school started and then
18 turned the gun on himself and killed himself.

19 But we went from a high number of 26 in 2000 to
20 six in 2005. And we're reviewing the cases now, but we
21 are optimistic, cautiously optimistic, that there were
22 only three domestic violence deaths as a result of -- in
23 Alameda County in 2006.

24 This is a tremendous example of how the
25 leadership of the District Attorney's office and law

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1 enforcement and the community partners can come together

2 and really have a tremendous impact on domestic
3 violence.

4 Alameda County is a very diverse county, and we
5 have a population of approximately 1.5 million people.
6 It's 750 square miles. There are six different
7 courthouses, and seven if you include our new Juvenile
8 Justice Center which is opening next week.

9 We did apply and were very honored to be
10 granted the -- a grant from the Department of Justice to
11 create one of the 15 Family Justice Centers, and we were
12 the community that received the highest grant of all of
13 them. And in a very short period of time, I'm really
14 proud to say that we far exceeded anything that they
15 thought that we would do. We far exceeded the blueprint
16 of the family center. Because we were a community who
17 had already been looking at these issues and we were
18 ready to make a change.

19 And under the leadership of the District
20 Attorney's office, we had full support from all law
21 enforcement. Everyone in the police department signed
22 on the MOU. All of our community partners were happy to
23 be in a place where they felt that finally we were going
24 to have strength and power and leadership behind us all
25 to make a difference so we weren't swimming upstream, or

21

1 at least, if we were, we were going to be swimming
2 together.

3 We looked at how the victim services were being
4 provided in the county, and we took an average -- an
5 average case of a woman with children. And what we
6 opined is that if she sought all available services, she
7 might have to go to as many as 25 different places,
8 including six different courts, to access service. And
9 we realized that it was -- that we were the ones who
10 were placing the barriers, that we were the ones who
11 were having the convenience of coming to work, and the
12 people who were operating in crisis, under extreme
13 pressures, with little or no knowledge of the various
14 systems, had the burden of trying to navigate all of
15 those systems and do so while in crisis.

16 We realized that half our retraining orders
17 were never making it into the database; that most of our
18 batterers were not going to treatment. And we just
19 turned that around to the leadership of the Family
20 Justice Center.

21 The District Attorney's office is the lead
22 agent in the Family Justice Center. Though we have
23 about 65 community partners who participate, and on site
24 alone, as Justice Kay has indicated, that we have the
25 representation of the civil legal community in both the

1 Family Violence Law Center and Bay Area Legal Aid and
2 the International Institute of the East Bay.

3 We have several child focus programs. And in
4 our 18 months of being open, we have served more than
5 2000 children who have witnessed domestic violence
6 through our kid zone and our counseling programs that we
7 have on site.

8 We have served more than -- we have provided
9 more than 10,000 victim services in that short period of
10 time of being in Oakland, and that is essentially
11 without advertising.

12 So it just reveals to us once again or affirms
13 the need of our services.

14 We brought the community together in 2005. We
15 had 102 partners at what is now our Family Justice
16 Center, then was a shell of a building. And the 102
17 people all had a say in how we were creating it. So
18 although the District Attorney's office took the
19 leadership role, and the court took the leadership role,
20 it is also incumbent on us, and we realize that, to be
21 inclusive of all of our partners, and by having an
22 inclusive program so that all partners could then have
23 ownership of the program, and it didn't rise or fall on
24 any one person or any one agency.

25 But no question that there has to be the strong

1 leaders, such as the District Attorney's office, to move
2 such a project forward.

3 The -- we had our first strategic planning
4 meeting in 2005. We opened about 7 months later. We --
5 2 weeks ago had our second summit, and we had another 50
6 of our community partners come to evaluate and really
7 acknowledge that we had achieved all we had planned for
8 in our original strategic plan, and that we created a
9 new strategic plan that leads us into the future.

10 We -- as I said, we have had more than 10,000
11 victim services. Though the center is located in
12 Oakland, obviously Oakland is not the only place where
13 domestic violence is occurring.

14 And so we turned to our partners who work at
15 the Family Justice Center called Deaf/HOH. And Deaf/HOH
16 provides community service, domestic violence and sexual
17 assault services to victims who are deaf or hard of
18 hearing. And Deaf/HOH has their operation now at the
19 Family Justice Center. And they taught us about the use

20 of such technology as video replay systems. And through
21 one of the grants that we received at the Family Justice
22 Center through the District Attorney's office, we have
23 been able to provide video relay systems to every
24 hospital, to all of the shelters, to all of the victim
25 domestic -- domestic violence victim service centers, to

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1 the family resource centers, to every law enforcement
2 agency, and to the job training centers.
3 And through video relay, or sort of a higher
4 end of video conferences, we are able to link victims in
5 Livermore and Dublin to services that are being provided
6 in Oakland. We're able to link job services, job
7 training in Berkeley to victims down in Fremont. We're
8 able to outreach to the Afghan community in Fremont
9 through Farsi-speaking advocates who work at the Family
10 Justice Center and to be able to link those services and
11 provide those services. And in fact, what our
12 counselors tell us is that once we create the secure
13 environment not in the family justice center -- by that
14 I mean a room -- but at the center where somebody is
15 sitting in Fremont or Livermore or Berkeley or some
16 other city, that counselors can provide counseling via
17 the video relay system in a confidential, secure way so
18 that victims don't have to travel to wherever the center
19 is.
20 This has been a huge -- made a huge difference
21 in the ability of victims countywide to access services.
22 And it's just part of our commitment to make sure that
23 we are providing services countywide and not just in
24 Oakland.
25 I will just very briefly tell you that in

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1 addition to our domestic violence services, which
2 provide services to adults and to children who witness
3 domestic violence, we have now expanded to include -- we
4 have a rape crisis center. BAWAR, which was the first
5 rape crisis center in America, is located there. We
6 have forensic medical providers who can also do not only
7 the first primary exam, but they can do follow-up exams,
8 because what we know is that domestic violence victims
9 and sexual assault victims will very rarely go back to
10 the emergency room for their follow-up, and it's so
11 important for them to have follow-up, not only from
12 different testing for STDs or other type of injuries

13 that they have, but also to make sure that they are okay
14 and that they're still safe.

15 So now victims can come to the Family Justice
16 Center for their follow-up.

17 We also have really outreached to our teenage
18 population. Maybe this was brought home more to us
19 because of the 2005, when three teenagers died as a
20 result of domestic violence. But we have really made a
21 concerted effort to provide not only counseling and
22 programs for teenagers who are victims and witnessing
23 domestic violence, but also teenagers who are
24 experiencing sexual abuse, sexual exploitation such as
25 being put on the street as prostitutes, and sexual

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1 assault.

2 Most recently, the Department of Justice,
3 through my very wise friend and her colleagues,
4 contacted us and we put on a conference at the Family
5 Justice Center around domestic violence and teen
6 domestic violence and teen dating violence. We had 80
7 people from the community coming to the Department of
8 Justice conference. And those of you who have -- you
9 can only imagine that it's very infrequent that
10 community partners such as a nonprofit agency would come
11 to a program put on by the Department of Justice. But
12 here we were all of us sitting in the room, really
13 hearing and learning and -- from each other and from the
14 speakers. And it was a tremendous -- tremendously
15 impactful day.

16 We have a kid zone where we have both children
17 being watched by child care providers and by child
18 development people. We've got four different agencies
19 that provide counseling for children. We have a -- what
20 we call a SPA. It's the first one that -- we think in
21 America. And what the SPA is, is it's a safe place
22 alternative for teenagers who are being victims of
23 sexual exploitation, sexual abuse or domestic violence.

24 And with our SPA program, we have been able to
25 help stabilize teenagers who are more at risk than the

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1 at-risk kids. Kids who are so abused that they really
2 have no idea how bad off -- how badly they are being
3 treated.

4 After a few days of stabilization, some
5 intense, and a safe place to be that is appropriate for

6 them, then we've seen some amazing turnarounds for kids
7 who then -- some of whom are able to go back to live
8 with their parents. Kids who have been on the street
9 for a while and things like that, that's made a huge
10 difference already.

11 We have brought in Public Health to the Family
12 Justice Center also through the leadership. And what
13 Public Health now is doing is, they've identified that
14 in one particular part of Oakland, that it's the highest
15 incident of domestic violence, the highest incident of
16 truancy, and the highest incident of children not being
17 immunized.

18 So Public Health is doing both medical
19 screening and immunization of kids while their parent is
20 being serviced for their domestic violence issues.

21 And in -- there are so many more programs that
22 are put out there that I could go on forever, and I
23 promise I won't, because I know I have a time limit.

24 May I just end with saying that there is no
25 question in Alameda County that it is only through the

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1 leadership of the court and really taking the bull by
2 the horns and creating the programs that they created
3 that started bringing us together. And I am really
4 proud to say that it is the leadership of the District
5 Attorney's office and the law enforcement that stepped
6 up to the plate as a result of the DA leadership that
7 came together and really welcomed the nonprofit
8 advocates and the nonprofit world to where we now have
9 advocates working with virtually every police department
10 in the county to provide better services for victims of
11 domestic violence.

12 Better services mean better prosecution, more
13 convictions, safer environments. And we have a huge
14 number success stories that prove that.

15 Over the last 6 months, I've had eight elected
16 District Attorneys come to the Family Justice Center --
17 eight elected DAs from the state, come to it our Family
18 Justice Center with their staff to see how they can
19 duplicate or at least create something like that in
20 their own communities.

21 And in each of those cases, the DAs have
22 identified and realize that it is incumbent on the
23 District Attorney as the chief law enforcement person in
24 the county to take that leadership role. To not only
25 start to bring those collaborative comprehensive

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1 services at a level where victims are able to
2 appropriately access them and there's follow-up, so we
3 don't just give them a piece of paper and say good-bye
4 good luck, we're with them throughout the process.
5 It is incumbent on the District Attorneys, it's
6 incumbent on the courts, to take that leadership role.
7 Because when we do, then the others will follow. And
8 when we first started our journey with the Family
9 Justice Center in San Diego, they told us, if you build
10 the plane, they will come. Now you may be flying the
11 plane while you're building it, but they will come.
12 And while it is true that we are still building
13 our plane, the first day we opened for a mock opening,
14 we had three people arrive at the Family Justice Center
15 seeking services. So it's been a tremendous honor to
16 serve the community in that way, and it is incumbent on
17 us to continue to work with the District Attorneys
18 throughout the state, incumbent on me personally, to
19 continue to work with the District Attorneys throughout
20 the state, and on a legislative level, to show that --
21 to have those District Attorneys take the lead role and
22 live -- be leaders in their community to really make
23 what we're doing worthwhile to the victims, who we are
24 saving.
25 Thank you.

30

1 JUDGE KAY: Thank you, Ms. O'Malley. It's
2 nothing sort of inspiring. It just shows what can be
3 done with resources. Really, you should be applauded.
4 You should be very proud on behalf of county and on
5 behalf of you personally. Thank you very much.
6 MS. O'MALLEY: Thank you.
7 JUDGE KAY: Are there any questions?
8 JUDGE MIRAM: Ms. O'Malley, do you have a
9 paramount fact to which you attribute the success that
10 you've had in reduction of homicides in domestic
11 violence cases?
12 MS. O'MALLEY: Yes, I think. And that is that
13 once we -- once the District -- we took over the
14 committee, we had law enforcement participating, which
15 is important. We also were very quickly able to
16 identify where the gaps were. And most of the gaps were
17 in the area of mental health.
18 And so what we did was, we reached out to the
19 mental health, behavioral health, to say, which of these
20 people who died or the people who killed had mental
21 health issues that could have benefited from some
22 intervention.
23 So if somebody is -- if a batterer is saying to
24 his spouse or his family, I don't want to live any more,

25 somebody could -- mental health could get involved in

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1 that, and there could be intervention that can divert
2 that path from going to murder -- to both murder and
3 suicide to maybe into treatment or medication or
4 counseling or just a crisis intervention.

5 So what -- one of the things that we feel is
6 that by having mental health becoming much more
7 proactive in dealing with domestic violence, that we've
8 made a big difference.

9 The other is that we've talked taught the
10 patrol officers to start hearing when somebody's saying
11 things like, I don't care any more, and those type of
12 defeatist statements, that oftentimes when we go back
13 and talk with family members or we look at the police
14 report or we look at the restraining order applications,
15 those statements were made. It's just nobody was
16 trained or picked up on the significance of them.

17 And although I would say that we -- it's not
18 uncommon for someone to say, I'm going to kill you when
19 they're mad, some people do kill when they're mad. And
20 so the fact that we became a company stronger cohesive
21 group in listening and then notifying each other and
22 getting all of the partners involved, I think has made a
23 huge difference.

24 JUDGE RILEY: I have a question. Ms. O'Malley,
25 hello.

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1 MS. O'MALLEY: Hello.

2 JUDGE RILEY: We're on the task force together.

3 The DA inspector that you mentioned, I know the
4 investigator, the advocate; but what is a DA inspector?

5 MS. O'MALLEY: Well, the DA inspector -- we
6 have a whole division, investigative division, and those
7 are all sworn peace officers who are all retired from
8 police departments, and then they come to work in it the
9 District Attorney's office.

10 Actually, it was in -- Alameda County had the
11 first inspector division created by then DA Earl Warren,
12 because he felt he couldn't trust the local police. He
13 was investigating them for graft and other things, so he
14 created what he considered an elite police department,
15 and that's who works for the DA.

16 So we have a -- we are one of the first in the
17 state to create a threat management stalking unit. And

18 that unit is comprised of prosecutors, victim advocates
19 and an inspector who's trained to do safety planning and
20 trained to work with victims about helping to build a
21 case around stalking or threat management.

22 And we started with that investigator going to
23 the court, but now we've trained several of our
24 inspectors, who are again peace officers, who are
25 sensitive to both hearing what people have to say and

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1 also have patience to be in an environment where people
2 are yelling at each other, and they're calming things
3 down, and they're not just shutting the door and saying,
4 I can't take this any more.

5 And so as a result of that, our inspectors have
6 played a really important role in both being able to
7 recognize, again, as Judge Miram asked, recognizing
8 somebody who is on the edge, or hearing someone say
9 something in court that other people may not -- it may
10 not even register, but to our trained investigators,
11 they're hearing things that make the hair on the back of
12 their neck stand up. And then they can make contact
13 with people and be much more proactive in the safety
14 planning and how to record phone calls and do all that
15 kind of thing.

16 JUDGE KAY: Thanks again.

17 MS. O'MALLEY: Thank you very much.

18 JUDGE KAY: Before we begin our next segment, I
19 would like to introduce Bill Vickery, the Administrative
20 Director of the Courts and the busiest person I have
21 ever known.

22 All right. I'd like to now call the speakers
23 for the second segment of the day: Domestic violence
24 restraining order proceedings.

25 Will the following speakers please come to the

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1 front while I introduce you.

2 Ms. Judy Saffren. Ms. Saffren is a sole
3 practitioner in San Jose and a member of the State Bar
4 of California's Family Law Section. She received an
5 Inaugural Angel Award from The California Lawyer in
6 recognition of her pro bono work.

7 Ms. Saffren helped to found the Domestic
8 Violence Limited Scope Representation Project, a
9 collaboration between the private bar, the court's
10 family law facilitator's office, and Santa Clara Law

11 School to provide legal services to both parties in
12 domestic violence restraining order proceedings.
13 Ms. Beverly Upton. Ms. Upton is the Executive
14 Director of the San Francisco Domestic Violence
15 Consortium, a network of 18 domestic violence services
16 agencies that come together with the goal of providing
17 quality coordinated and comprehensive services to San
18 Francisco's victims of domestic violence.
19 Ms. Upton has been an advocate for victims of
20 domestic violence for many years.
21 Ms. Marivic Mabanag. Ms. Mabanag is the
22 Executive Director of the California Partnership to End
23 Domestic Violence, the statewide domestic violence
24 coalition.
25 Ms. Mabanag also serves on one of the Judicial

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1 Council's important domestic violence committees that
2 oversees the development of judicial education on
3 domestic violence crimes.
4 Ms. Susan Shawn Robert. Ms. Roberts is a staff
5 attorney at Bay Area Legal Aid, the largest provider of
6 free legal services to low income communities in the Bay
7 Area.
8 Ms. Roberts' office provides legal services
9 relating to restraining orders, divorce, safe custody
10 and visitation orders and domestic violence-related
11 immigration matters.
12 Bay Area Legal Aid received 65,000 phone calls
13 relating to domestic violence in 2005.
14 Ms. Pamela Kallsen. Ms. Kallsen is the
15 Executive Director of the Marjaree Mason Center in
16 Fresno. The center is the only program that provides
17 shelter and comprehensive support services to women and
18 children victimized by domestic violence in Fresno
19 County.
20 Ms. Kallsen received the 29th Assembly
21 District's 2000 Woman of the Year award for her work
22 with the center.
23 Welcome.
24 Ms. Saffren?
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1 --o0o--
2 COMMENTS BY MS. JULIE S. SAFFREN
3 MS. SAFFREN: Justice Kay and distinguished

4 members of the Task Force, thank you for inviting me to
5 speak today.

6 My remarks will address the practices of court
7 leadership, courts working with justice systems and
8 other community organizations, and courts exploring ways
9 to bring legal representation to both parties, which is
10 what our DVLSR project is all about. I'll conclude with
11 very brief on non-CLETS orders.

12 The Draft Guidelines and Recommended Practices
13 are an impressive compilation of practices that are
14 going to greatly improve safety, stability and access to
15 justice for DV families, especially victims and
16 children. I felt privileged as I reviewed that list,
17 because so many of the practices are already in place in
18 my county.

19 I was humbled to recognize that the services
20 that I take for granted for my clients do not exist
21 across all California's counties, such as a court-based
22 restraining order help center, specialized DV calendars,
23 streamlined mechanisms for enterings of orders into the
24 CLETS system, safety protocols, and many more.

25 I feel fortunate to participate in regular

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1 meetings between the court and community organizations
2 to explore gaps in services to DV families, and to
3 create new ways to fill those gaps in the absence of
4 resources and funding.

5 I believe my colleagues in other counties, or
6 many other counties, do not have similar opportunities
7 to collaborate with their courts as I do, and that's
8 unfortunate.

9 Santa Clara County's reputation as leading edge
10 in terms of domestic violence best practices is directly
11 connected to court leadership and a willingness to
12 communicate and collaborate with members of the
13 community. That's why the Task Force identifying these
14 two factors as best practices and implementing them
15 statewide is so important.

16 Here are some specific examples of court
17 leadership in action:

18 The services available on our specialized
19 family court DV calendar are a direct function of the
20 court leadership, particularly the years of efforts by
21 one enlightened judge. Our courtroom includes
22 interpreters, resource specialist for local DV agencies,
23 representatives from victim and witness, clerk assistant
24 with orders after hearing, Master's in social work
25 interns from San Jose State to function as case

1 managers, and representatives from the First 5
 2 Commission.

3 Our County DV Council, which was established in
 4 1991 by the Board of Supervisors, includes members of
 5 the court and has key committees including dec review,
 6 batterers' intervention, victims services; and
 7 specifically, the Court Systems Committee, which is
 8 chaired by judges and meets regularly to exchange
 9 information and ideas and to report back to the Council
 10 on DV matters.

11 That means if I have a concern that criminal
 12 domestic violence matters are being resolved with anger
 13 management instead of a 52-week batterers' intervention
 14 program, I have a venue that I can go to to voice that
 15 concern. That's where important topics that affect all
 16 the court systems can be addressed.

17 Our family court also offers quarterly liaison
 18 meetings at the DV community to enable further direct
 19 feedback on issues ranging from interpreters to cultural
 20 issues to safety to the victim experience and family
 21 court services. Our court stresses training to -- on
 22 domestic violence to court staff, provides a great deal
 23 of self-help information and assistance to DV litigants.
 24 Both petitioners and respondents, distributes
 25 information at court about access to services, and has

1 regular liaison with the bar to include DV issues.

2 These examples all demonstrate that creating
 3 change in the institution of the court is possible, but
 4 it has to start from the top. Without prioritizing
 5 importance of court leadership and the willingness to
 6 communicate with other entities and the community
 7 organization, many of the practices you identified are
 8 not going to be able to be realized.

9 Creating a climate that fosters change requires
 10 a time commitment and dedication from judges and court
 11 staff who are already tremendously overburdened. But I
 12 say with certainty that if courts -- if judges and court
 13 staff are willing to show such leadership, the bar, the
 14 members of the mental health community and the members
 15 of the domestic violence community are going to respond.

16 I believe our DV program exists today because
 17 Santa Clara County welcomed it into the environment as a
 18 new idea. And we are unique among California counties
 19 in our ability to respond to DV families, but we
 20 shouldn't be unique. It's laudable, but I really think
 21 that other counties need to be able to raise to the same
 22 level of practice.

23 The guidelines suggest that courts explore
24 options with the bar and other agencies to foster
25 increased representation to both parties and family

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1 court. I was very pleased to see this practice
2 recommended, and I want to tell you about how it's
3 implemented in my county through our DVLSR project.
4 I'll start by saying that the concept of
5 providing a free attorney to a batterer is a
6 controversial one, especially when legal services are
7 scarce. The DV community voices a legitimate concern
8 when they say that an attorney can become another weapon
9 in the arsenal of the abuser, and the court is just
10 another battlefield on which to revictimize the victim.
11 This was on our minds throughout the development of
12 DVLSR.
13 I realized early in my career that helping a
14 battered woman obtain a restraining order against her
15 nonrepresented, non-English-speaking partner is not a
16 satisfying legal victory. No one explains the orders,
17 no one explains the consequences, no one counsels the
18 other side to get services, no one reminds them of the
19 impact of exposure to DV to their children. No one
20 hears him at all, and he leaves court as angry as when
21 he got there, and that places my client and her children
22 at risk.
23 I believe I can be an advocate for victims and
24 their children by helping insure the other side has
25 access to resources, including an attorney, and I

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1 believe my client is safer when a DV-trained attorney
2 represents the other side.
3 The DVLSR collaborative is made up of
4 identified players that exist in most counties. There
5 is a legal services provider. In my county, we have the
6 Pro Bono Project of Silicon Valley. They wanted to
7 extend their model of trained volunteers to handle
8 divorces and use limited-scope rules to recommend in DV
9 cases.
10 They began working with our family law
11 facilitator, who had conceived of the DVLSR idea in a
12 volunteer capacity.
13 We worked with a domestic violence agency, Next
14 Door Solutions to Domestic Violence. They were brought
15 to the table early. They assisted us in piloting a

16 program and make sure it would scale to accept clients
17 referrals from many intake sources.
18 We sought funding from the county bar from
19 First 5, but the bulk of our funding came from Blue
20 Shield Foundation. They invested in us because they
21 believed our model was unique in helping both sides as a
22 way of reducing community violence.
23 The courts have been instrumental in developing
24 DVLSR in large part by urging a framework of assisting
25 both sides. They worked with us on calendar issues,

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1 getting word out to litigants, providing information
2 about legal services with every TRO that's issued and
3 every information packet that's distributed.
4 Judges and members of court staff participated
5 in our trainings and helped us sensitize volunteer
6 attorneys and certified law clerks on the complex issues
7 of DV.
8 We've had great response from local law firms
9 who see us as a way to provide associates experience
10 while they help the community.
11 Members of our family law bar have taken our
12 training, and experienced attorneys have acted as
13 trainers and mentors on both petitioner and respondent's
14 side.
15 Law students from Santa Clara University and
16 now Lincoln Law School have completed our training and
17 have appeared as certified students. DV matters are
18 excellent teaching opportunities for law students.
19 All these players exist in some form or another
20 in other counties, so there's no reason why the DVLSR
21 model could not be replicated and implemented on a wider
22 basis so more litigants can get representation.
23 Our training suggests volunteer attorneys
24 customize a solution to each family. Not every family
25 needs a five-year order. Not every family needs

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1 professional supervised visitation. But every family
2 needs referral to appropriate services, support orders,
3 comprehension of orders, understanding of enforcement
4 and violations, even understanding what brief and
5 peaceful contact regarding visitation means.
6 Our attorneys attempt settlement -- I'm sorry,
7 can you hold that up again? Did it say 1?
8 Our attorneys attempt creative settlement, such

9 as keeping the temporary orders in place while everyone
10 seeks services and revisiting the request for permanent
11 orders at a later date, or stipulating to CLETS orders
12 of shorter duration and review hearings.

13 After someone's completed a parenting without
14 violence class, to see if the children still need to be
15 protected on the restraining order. We preserve the
16 protected parties' ability to seek renewal at that time.

17 DVLSR has, benefits, including tailored orders,
18 court processes clearly explained, every litigant's
19 voice is of heard, after-care and resources, safety
20 first on the parts of the attorneys training, and
21 resolution through a variety of mechanisms.

22 In short, the administration of justice of
23 these matters is smoother.

24 Since I only have a minute left, I just want to
25 briefly say that, you know, I envision the day when the

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1 DV calendars will not be 98 percent self-represented
2 parties, and this will come sooner if the courts
3 prioritize bringing legal service agencies, the bar, law
4 firms, and domestic violence agencies together for
5 programs like this.

6 On the brief topic of non-CLETS orders, I'm in
7 agreement with the concerns the Task Force has outlined.
8 But despite those concerns, I do not wish them to be
9 altogether prohibited. I believe that if a victim has
10 DV-trained counsel, there are very rare instances where
11 a non-CLETS order may be an appropriate outcome. It may
12 be preferable to a hearing where a victim will not meet
13 her burden, or a hearing that stands to expose a victim
14 to extreme humiliation. It may be a reasonable option
15 in very limited circumstances related to employment or
16 immigration consequences.

17 Non-CLETS is a problematic gray area, but it
18 should remain gray rather than the black and white
19 options of prohibiting them, or worse,
20 institutionalizing them. I believe we need to see
21 sufficient education of the bench and the bar to
22 recognize a narrow exception zone where they can exist,
23 because that is where they may have some benefit to the
24 victims.

25 Thank you very much.

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1 JUDGE KAY: Thank you. Members of the task

2 force, do you have any questions for Ms. Saffren?
3 Thank you very much. All right. Ms. Upton.
4 --o0o--
5 COMMENTS BY MS. BEVERLY UPTON
6 MS. UPTON: Good morning. Such a pleasure to
7 be here today, and I want to start my comments by
8 thanking -- on the behalf of the Domestic Violence
9 Consortium, which consists of 17 domestic violence
10 service providers in San Francisco, I want to thank the
11 Task Force for your leadership and your far-reaching and
12 potentially life-saving work in the decisions that will
13 come out of these meetings and this work as it moves
14 forward.
15 It's tremendous, and we so appreciate
16 everything that you've put into it so far, and we look
17 forward to continuing to work with the panel.
18 We're going to concentrate our -- and I say we,
19 because we are the DV community; we collaborate on
20 everything.
21 I am bringing forth really a -- a mixture of
22 feedback that we received from several different
23 attorneys doing -- working in this area, and in addition
24 to service providers as well: Hotline, crisis line,
25 domestic violence shelters and batterers' intervention.

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1 So thank you for this opportunity.
2 We're going to make comments on five of the
3 recommendations. And the first one is the partnership
4 with the domestic violence community and the courts.
5 I'll be brief, but we cannot overemphasize
6 this.
7 While it's wonderful to see the domestic
8 violence advocates and attorneys being invited to speak
9 at the public hearings and to see so many draft
10 recommendation encouraging the courts to partner with
11 local agencies in order to work effectively to keep
12 victims and their children safe -- this is really
13 inspirational to the community -- I will also add that
14 the Domestic Violence Consortium has been working
15 together for 25 years. This is our 25-year anniversary.
16 So many of the comments that you will hear today have
17 really been borne out of years and years of working with
18 the system and recognizing what victims could use moving
19 forward to keep themselves and their children safe.
20 While some local courts and advocates may eye
21 each other with suspicion, we all have the same goals in
22 increasing access to justice and maintaining a web of
23 safety around the families in our community. And these
24 draft recommendations will only help to strengthen a
25 bridge between advocates and the bench. And we so

1 appreciate this, because we are very lucky in San
2 Francisco. And just as our speaker before me spoke
3 about Santa Clara County and some of the advantages, we
4 think our advantage is having been able to interface
5 with our bench on different task force and federal
6 initiatives where we could work together without
7 directly trying to influence, but also trying to educate
8 each other.

9 So this -- we've had a long history of this,
10 and we think that this is consistent of the work that
11 you're doing now.

12 Increased partnerships between the courts and
13 community-based organizations would surely be welcomed
14 by local communities, whether it took place through
15 meaningful participation at our family justice -- our
16 Family Violence Council collaborations with SafeStart
17 and Greenbook, or simply regular meetings to discussion
18 policies and procedures affecting the safety of victims
19 and litigants.

20 I'll also say that San Francisco was very lucky
21 and fortunate to have a federal initiative called the
22 Greenbook project, which most of you are familiar with,
23 out of the National Council of Juvenile and Family Court
24 Judges. We worked with the bench for 6 years in San
25 Francisco on this project. And one of the gaps that we

1 will see is that the project will be ended -- it has
2 ended, basically. There are a few implementation issues
3 left. But I think it also leaves a gap and a potential
4 opportunity for us to work together more on the
5 interception of domestic violence and children exposed.

6 Many of the best practices listed in the draft
7 recommendations are already in place in different courts
8 throughout the state, and many of them were the result
9 of local partnerships that helped courts evaluate the
10 safety and security of their facilities' practices and
11 policies.

12 We can't say enough about any work being done
13 around securing our facilities. I'm seeing my
14 colleague, thank you so much, in agreement.

15 We have -- the community and the bench has been
16 working together for quite some time to try to ensure
17 safety and figure out ways to have victims and
18 perpetrators not standing in the same lines in the
19 morning going into court, not having common waiting

20 areas.
21 We were making some progress, but we lost our
22 space for our domestic violence response unit for our
23 police department, so now we're kind of back to square
24 one.
25 So we also know that that's a big concern for

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1 this Task Force, and we so appreciate any work moving
2 forward that can help assure that.
3 San Francisco has done a lot, but, as you all
4 know, funding is -- is scarce in this area. But we want
5 to partner in any way we possibly can to ensure greater
6 safety and I am -- confidentiality is not even -- in the
7 safety issues, I mean, just we're concerned about a
8 homicide happening at one of our facilities. So we want
9 to join with you and really congratulate you on any work
10 moving forward that would increase safety in the
11 courthouses, both civil and criminal.
12 I think we have seen a few tragedies in civil
13 courts across the state, and sometimes they're not the
14 focus of the security needs that need to be put in
15 place. And so we appreciate what's been done so far,
16 and we hope to join with you in this as we move forward.
17 The family law facilitators, court-based
18 self-help center, we saw this as a huge step forward
19 when it was implemented, and we believe it still has
20 promise. But San Francisco -- and I'll just speak for
21 our community currently -- we speak over a hundred
22 languages in San Francisco. And so to burden the
23 self-help window with not the collaborative partners at
24 the table to help be culturally competent and
25 linguistically competent, I think we're asking our

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1 self-help centers to do a very tall order, and I think
2 that it could put victims at risk. Not understanding
3 the orders, not speaking to someone who speaks their
4 language.
5 So again, we see an opportunity in this gap to
6 see if we couldn't build a stronger bridge between some
7 community-based organizations and the self-help window.
8 Tomorrow, Asian Women's Shelter has the MLAM,
9 Multi-Language Access Model. That alone would avail the
10 self-help window of 26 Asian languages.
11 There are Asian languages that don't even have
12 the words "domestic violence" in them. So you can tell

13 that if a woman, a victim, is coming, she is going to
14 need somebody who's culturally competent in her
15 language. So while we see the self-help window
16 certainly as a tool and a big step forward, we think,
17 especially in San Francisco, and I would say in all
18 diverse communities, an opportunity to build some
19 bridges with more community-based organizations.
20 We're also concerned about the confidentiality,
21 because it's not explained in general to survivors as
22 they're coming in that there is a difference between
23 speaking with an advocate and speaking with court
24 personnel. So we are looking for ways to create safety
25 and confidentiality by maybe building some bridges with

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1 the community-based agencies.
2 Either that, or, they should it be notified in
3 the very beginning that this is not an advocacy/client
4 relationship. Advocate/client relationship. That this
5 is -- lacks confidentiality, and may be given some
6 resources where they could achieve confidentiality and
7 be able to speak more freely.
8 In Recommendation 5, the task force recommends
9 increasing funding for the self-help centers. And so we
10 just can't to echo that while we do understand that
11 additional funding is needed, we'd like to see a funding
12 bridge be built, and really strengthened, especially for
13 diverse communities.
14 One of the other -- or several of the other
15 issues we wanted to address about the -- some of what we
16 perceive and some of our clients have perceived to be
17 limitations of the self-help window is the inability to
18 give legal advice, to engage in safety planning and to
19 coordinate with the prosecutor's office if and when the
20 survivor could have a criminal case as well.
21 So we also see this as an opportunity to build
22 some bridges and make some referrals to legal service
23 providers that could help -- in the community that could
24 help bridge that gap.
25 We do again see a tremendous opportunity and a

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1 link here, but we think it really needs to be
2 strengthened. And again, I think you would find lots of
3 folks in the domestic violence communities across the
4 state that would be willing to help with this.
5 Here's a big one for me. Implementation of

6 existing laws. I know this is no secret to you.
7 Many of us here have worked on lots and lots of
8 legislation and been very, very successful. And to me,
9 after about 10 years doing this work, and certainly to
10 many members of the Domestic Violence Consortium doing
11 this work for 20 plus years, seeing implementation as
12 our next -- as our next step seems to be more realistic
13 than trying to find new legislation.
14 We have tremendous laws that have been passed
15 in the last 10 years that have not been implemented yet
16 fully. Some of it is funding, and some of it is
17 political will.
18 We urge the Task Force to move the
19 implementation forward. In fact, as the Task Force
20 continues, and we hope it does continue to do this work,
21 we really see implementation as a clear role for the
22 Task Force to take on. And again, the legal services
23 community and the victim services communities of most
24 counties will be more than willing, especially because
25 they helped write a lot of this legislation, saw it as a

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1 success when it was passed, and then have seen it
2 languish in a lack of implementation, would be so
3 honored to join with you in that effort.
4 The third issue and recommendation we wanted to
5 address was Family Code 6305, the mutual restraining
6 orders.
7 This we're seeing on a daily basis, and I know
8 that it's seen by all advocates and legal service
9 providers across the state. We're so concerned about
10 it. We think that it undermines the victims' faith in
11 the legal system and fails to provide meaningful
12 protection to domestic violence victims.
13 We're so concerned and have seen this with so
14 many survivors trying to make their way through the
15 system that if they have a restraining order, a mutual
16 restraining order, it's basically sending the message
17 that the community did not believe them, and that they
18 are just as guilty. They are less likely to seek
19 services, they're less likely to seek services for their
20 children, and we think they're less likely to call again
21 if they're in danger. We're very, very concerned.
22 We also see this as an opportunity for primary
23 aggressor training and a much deeper knowledge in
24 training for our police departments and everyone all the
25 way from the police department to the bench. We'd like

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1 to see less findings that say, I find that both parties
2 acted primarily as aggressors. Such a finding
3 underlines the intent of the statute and does not
4 provide meaningful protection to victims.
5 This language was actually adopted out of
6 another piece of legislation. It was not ever actually
7 drafted to be domestic violence language. And it
8 really -- it's just not nuanced enough to capture the
9 dynamics of domestic violence. And so we're hoping that
10 the Task Force will look at this as we move forward.
11 Before making mutual restraining orders, the
12 court could borrow from policies and procedures mandated
13 to law enforcement regarding dual arrests. In Penal
14 Code Section 13701(b), it discourages mutual arrest --
15 dual arrest, and requires that peace officers make
16 reasonable efforts to identify the dominant aggressor in
17 any domestic violence incident.
18 A dominant aggressor analysis requires law
19 enforcement to remember that the dominant aggressor is
20 the most significant, not the first aggressor, and also
21 requires law enforcement to consider the intent of the
22 law to protect victims of domestic violence from
23 continuing abuse, the threats creating fear and physical
24 injury, the history of domestic violence between the
25 persons involved, and whether or not the person acted in

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1 self-defense.
2 We would like to see more in-depth training and
3 more implementation around this language where people
4 understand what the intent of the law was. So much of
5 this has been borrowed -- again, I don't want to repeat
6 myself, but it -- the language just in the Penal Code
7 around dual arrest is -- just does not take the nuances
8 of domestic violence into account, and so we're looking
9 to perhaps expand some of our trainings and expand the
10 knowledge that we feel has been gathered over the last
11 few years by law enforcement.
12 Our last and final recommendation that we
13 wanted to comment on this morning was Family Code 3044
14 and related provisions.
15 Other existing laws lack consistent application
16 and are not identified -- you know what? Rather than
17 trying to read this, I'm just going to say, 3044, again,
18 is probably one of the most unimplemented pieces of
19 legislation that people worked so hard on. It really
20 would create a safety net for victims of domestic
21 violence and their children if the presumption could be
22 taken seriously, if some deeper work could be done and
23 it could be fully implemented.
24 It passed the legislation almost 9 years ago,

25 or 10 years ago now. It's not very well implemented in

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1 a lot of counties. We would like to see that revisited.
2 And if it needs cleanup language, certainly there's an
3 opportunity to do that. But it was well thought out,
4 and we'd like to see further implementation.
5 And in my closing, I think what I'd like to say
6 is, I think the domestic violence community really sees
7 just the work for implementation to be just the highest
8 priority for us and what we're hoping is a very high
9 priority for you.
10 We at the Domestic Violence Consortium thank
11 the task force for their incredible work and encourage
12 ongoing work regarding community collaborations and
13 implementation, training, and to make sure that existing
14 laws meant to provide safety, protection and peace of
15 mind to victims of domestic violence and their children
16 are implemented and implemented well in the State of
17 California.
18 Thank you so much.
19 JUDGE KAY: Thank you. Do members have any
20 questions?
21 MS. UPTON: Oh, yes. I also have -- any
22 questions?
23 JUDGE KAY: No. Thank you.
24 Ms. Mabanag?
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1 --o0o--
2 COMMENTS BY MS. MARIVIC BAY MABANAG
3 MS. MABANAG: Good morning, everyone, honorable
4 judges. I am Marivic Mabanag, Executive Director of the
5 California Partnership to End Domestic Violence. We are
6 your state domestic violence coalition of the 160 member
7 organizations of domestic violence emergency shelters,
8 providers, and other allied partners working in --
9 throughout the state and in 58 counties and represented
10 in seven regions around the state.
11 Most importantly, I am here before you
12 representing the thousands of victims and children who
13 are in shelters today or in abusive homes who do not
14 have the same privilege as I do to share with you our
15 thoughts regarding the draft recommendations.
16 As a survivor of domestic violence and a
17 granddaughter of the former Secretary of Justice of the

18 Philippines, it is indeed fitting and an honor to
19 address you this morning. So thank you, Honorable Judge
20 Kay, for inviting the California Partnership to this
21 very important hearing.

22 First I would like to commend Chief Justice
23 George for convening, and the entire members of the Task
24 Force for your leadership, and indeed, your ongoing
25 political and moral will, to ensure that fair,

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1 expeditious and accessible justice for litigants in
2 domestic violence cases is ensured.

3 As the Director of the State Domestic Violence
4 Coalition, we hear of gaps in our systems every day, and
5 throughout the state and also nationally, since we
6 represent California at the federal level.

7 From the famous case and tragic case of Claire
8 Joyce Tempongko, right here in San Francisco; Maria
9 Teresa Macias in Sonoma County; to Yvette Cade
10 nationally in Baltimore, where Judge Richard Palumbo
11 denied her restraining order, and who I was with in
12 October, where -- you -- I cannot explain to you what it
13 felt like to hug the body of someone whose body was
14 burned over 60 percent of her body. That was really an
15 important wakeup call for me as well as for the rest of
16 our coalition.

17 Because in spite of the many progress you have
18 all made over the last several years, there is still
19 much that still needs to be done in the areas of
20 enforcement to ensure safety and justice for victims and
21 perpetrator accountability.

22 And in 2005, with 155 homicides in California
23 from age -- from intimate partner violence from ages
24 zero to 87, we read each of their names at the state
25 capitol in October during Domestic Violence Awareness

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1 Month, because we felt it was important to honor their
2 names in an event that we called "Remember My Name,"
3 because those are the very people for whom we have a
4 sacred contract to be able to do our work and to work
5 with you as well.

6 The California Partnership will be submitting a
7 written document outlining all our comments regarding
8 the draft guidelines and recommended practices.

9 For today, I wish to highlight in four areas
10 where we feel challenges remain and are an important

11 priority for implementation.
12 The first is court leadership. We believe that
13 if the Judicial Council focused entirely on court
14 leadership, that alone would be the catalyst for the
15 realization and implementation of the recommended
16 practice. So we look to you to be able to do that and
17 honor you in continuing that work.
18 The second part is on emergency protective
19 orders. The California Partnership to End Domestic
20 Violence has conducted a series of domestic violence
21 legislative and social science update trainings all
22 throughout California last year and this year. During
23 these trainings, we repeatedly heard from attorneys and
24 advocates around the state that in some jurisdictions,
25 emergency protective orders are routinely denied or not

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1 even considered by judicial officers during business
2 hours under the theory that those victims should go to
3 the courthouse to apply for restraining orders from the
4 family court.
5 Such a theory ignores the reality of the
6 women's lives and does not take into consideration
7 everything else a victim must do when law enforcement
8 has been contacted in a domestic violence case.
9 Domestic violence victims have many good
10 reasons why they are not able to go to court to complete
11 their requisite paperwork to apply for a restraining
12 order immediately after a violent incident. She may be
13 asked to come to the local police station to complete a
14 statement or to be interviewed. She may require
15 immediate medical care. She may need to pick up her
16 children from school or arrange for child care. Or she
17 may need to take care of any of a number of issues we
18 all face in our daily lives, the difficulty of which is
19 exacerbated for her by the most recent incident of
20 violence and the intervention of the criminal justice
21 system.
22 If law enforcement has already been called to
23 the scene, issuance and a BBO should always be
24 considered, rather than putting an additional burden on
25 the victim to make the arrangements to apply for a DVPA

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1 order.
2 The third, requiring police reports.
3 Recommendation No. 20: The court shall consider the

4 application for a restraining order and make may issue
5 all appropriate orders without requiring corroborating
6 evidence.
7 It's an important recommendation. So we are so
8 glad that you have included that.
9 We also heard from domestic violence attorneys
10 and advocates throughout the state that petitioners were
11 being required to bring police reports to court to
12 document their claims of abuse and that restraining
13 orders are being denied without such corroborating
14 evidence.
15 Obtaining police reports is not necessarily
16 easy for domestic violence victims. First a victim must
17 overcome many hurdles just to call the police. Fear of
18 repercussions from the batterer; fear of the criminal
19 justice system itself, particularly for immigrant women;
20 lack of interpreters; fear that the batterer will be
21 jailed or reported, when all she wants is for him to
22 leave her alone.
23 Once she does that, obtaining a copy of the
24 report in a timely manner can be difficult. Family Code
25 Section 6228 requires that law enforcement give one free

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1 copy of incident reports to a victim within 5 working
2 days of her request, but allows for good cause delays up
3 to 10 working days.
4 Even with the statute in place, however,
5 victims around the state tell us that their local law
6 enforcement will not provide them with any free copies
7 of the report.
8 Even if they get a free copy, the hearing on
9 their request for a restraining order may have come and
10 gone in the 2 weeks law enforcement is allowed to take
11 before providing a copy. Even if the victim does obtain
12 a copy in time for the hearing, we all know that police
13 reports often contain inaccuracies simply because of the
14 conditions under which law enforcement officers work and
15 draft their reports.
16 The fourth area that I am highlighting is on
17 custody and visitation. We consistently hear stories
18 throughout the state of victims who continue to be
19 harassed, threatened and abused during visitation
20 exchanges at the children's extracurricular activities,
21 as well as before, during and after further court
22 hearing regarding issues of child custody, visitation or
23 support.
24 Despite the centrality of domestic violence in
25 ongoing custody and support disputes for these families,

1 these draft recommendations contain few mentions of best
 2 practices around custody, visitation and support in
 3 domestic violence cases. We already have statutes
 4 requiring courts to consider domestic violence in
 5 custody and visitation proceedings, and I would support
 6 strong recommendations that courts bear in mind the
 7 options, Family Code 6323, of having supervised visits,
 8 or, indeed, suspending or denying visits in cases that
 9 warrant such orders.

10 These laws were passed because of real concerns
 11 for the safety of the parties' children in cases
 12 involving domestic violence. We all want to prevent
 13 further tragedies like the one from Indiana earlier this
 14 month in which Eric Johnson killed his 8-year-old
 15 daughter Emily by crashes his plane into his former
 16 mother-in-law's house after calling his ex-wife, Beth,
 17 to tell her, quote, and I quote, "I've got her. I've
 18 got her, and you're not going to get her," while Emily
 19 screamed in the background, "Mommy, come get me, come
 20 get me." Beth Johnson had obtained a restraining order
 21 against Mr. Johnson in July 2006.

22 While this is just the most recent tragedy that
 23 has hit the national media, we have such stories
 24 throughout the country, and indeed, all over California
 25 and in our back yard as well. In our own back yard.

1 In restraining orders in which the parties do
 2 not have children together, we can have more hope that
 3 the victim can escape the violence. In cases in which
 4 the parties have children, enforcement -- have children
 5 together, the batterer will continue to have access to
 6 the victim and to their children, at least until the
 7 youngest child turns 18, and often continuing after that
 8 as well.

9 In families affected by domestic violence, the
 10 issues of child custody and visitation can never be
 11 considered separately from domestic violence. Domestic
 12 violence is first and foremost about the batterer's
 13 desire to have control over the victim. And as Emily
 14 Johnson's death reminds us, some batterers will do and
 15 try to achieve that control at any cost.

16 And finally, we -- as I mentioned, we will be
 17 submitting a comprehensive document outlining our
 18 comments. But I wanted to just thank all of you for
 19 really focusing on the work that you have to do on our
 20 behalf. And with our proud record of 25 years of
 21 successfully passing a hundred pieces of legislation on
 22 behalf of battered women and their children, the

23 California Partnership is committed to working --
24 continually working with our state legislative members
25 to look at the legislative and policy changes that need

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1 to happen through our policy advocacy work.
2 At the federal level, because I represent
3 California, I am prepared in the next coming weeks as I
4 work with the National Network to End Domestic Violence
5 to work with our federal government to make sure we have
6 a reauthorization of VAWA to make sure that there's
7 proper allocation of resources and adequate resources
8 come to our state to do the work that you do and that we
9 do collaboratively.
10 And finally, we welcome the increased
11 partnership between the courts and our member agencies
12 all throughout the state. Thousands of victims and
13 children exposed to violence are counting on each of
14 you. So thank you for your continued political and
15 moral leadership.
16 JUDGE KAY: Thank you very much. Are there any
17 questions for Ms. Mabanag? If not, we will proceed with
18 Ms. Roberts.
19 --o0o--
20 COMMENTS BY MS. SUSAN SHAWN ROBERTS
21 MS. ROBERTS: On behalf of Bay Area Legal Aid,
22 thank you for the opportunity to speak with you today
23 about your -- the work of the Task Force recommendations
24 that you made.
25 Bay Area Legal Aid provides direct

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1 representation in the area of family law to domestic
2 violence survivors in five Bay Area counties. We also
3 run court-based restraining order clinics in San Mateo
4 and Contra Costa Counties and help supervise the
5 Cooperative Restraining Order Clinic in San Francisco.
6 Bay Legal and its predecessor legal aid
7 agencies have been assisting abuse survivors in this
8 area for over 40 years.
9 In our work with our clients, we also often see
10 the problems encountered by them as they attempt to
11 access the justice system, and we really appreciate the
12 opportunity to work with you on long-term solutions to
13 remedy these problems.
14 One of the things that we wanted to recommend
15 in -- after our review of the recommendations is that as

16 many of these recommendations as possible be codified in
17 Rules of Court statute. Given the frequent turnover in
18 the judicial offices that hear restraining order
19 matters, it's important that clear mandates exist to
20 guide them in processing restraining order requests.

21 Overall, the task force recommendations are
22 insightful and appropriate. During the last year we've
23 seen many of the changes, or many of the
24 recommendations, implemented in the counties where we
25 practice, and they're very welcome, although I must say

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1 that after hearing some of the earlier presentations, I
2 think I've developed county envy, because although we're
3 making progress in many of the counties outside of San
4 Francisco, Santa Clara and Alameda Counties, there is
5 still a long way to go.

6 We remain particularly concerned that
7 individuals who are least able to successfully navigate
8 their way through the legal system will remain
9 marginalized and unable to obtain the orders that they
10 desperately need, even if the recommendations are
11 followed, unless the courts also work to provide the
12 special assistance that's needed for non-English
13 speaking individuals who aren't computer savvy and/or
14 those with disabilities.

15 We also remain concerned that those who are
16 unable to access the courthouses themselves due to
17 problems related to limited mass transit in
18 geographically diverse counties may continue to be shut
19 out of the system completely or will drop out at some
20 point in the process because of their inability to drop
21 off their requested orders, pick up their orders once
22 they're signed, return for orientation and mediation
23 appointments, and make it on time to multiple hearings.

24 In particular, with regard to Recommendation
25 No. 4, which has to do with legal service referrals,

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1 you'll not be surprised that Bay Area Legal Aid strongly
2 agrees with the importance of the court informing all
3 litigants about the availability of legal services and
4 with expanding access to representation for persons
5 seeking restraining orders.

6 However, the recommendation of fostering
7 representation for both parties in domestic violence
8 restraining order cases is more problematic. Our

9 personal experience has been that when batterers have
10 representation, they are more likely to vigorously
11 contest restraining orders even without legitimate
12 factual defenses. They are more likely to request long
13 cause hearings, and they are more likely to use the
14 court process to perpetuate a pattern of abuse and
15 control.

16 With regard to Recommendation No. 9, which has
17 to do with emergency protective orders, we agree with
18 the recommendation that would ensure maximum
19 accessibility of judicial officers in issuing these
20 orders. And we've seen this process work well in San
21 Francisco and San Mateo Counties, where judges often
22 interrupt active calendars to deal with EPO requests.

23 Given the current difficulties that many of our
24 clients and other pro pers have in accessing the court,
25 it's particularly important that they can receive the

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1 short-term protections afforded by emergency protective
2 orders when needed to allow them that 5 to 7 days that
3 it frequently takes to get a restraining order not only
4 filed, but picked up and actually served.

5 One other suggestion we would make, however, is
6 to create some sort of a filing system or a system for
7 follow-up and tracking emergency protective orders once
8 they're granted. Although Family Code Section 6271(c)
9 requires law enforcement to file a copy of an EPO with
10 the court as soon as it's possible after issuance, and
11 although I heard this morning that there are databases
12 where the information about the issuance of EPOs are
13 entered, our experience is that it's very hard to get
14 access to that information after the issuance of the
15 EPOs. And in asking the courts for information about
16 EPOs that have been issued, we've encountered great
17 difficulty.

18 So what we would recommend is not only that a
19 system be created that allows public access to those
20 records, but also that those records be periodically
21 reviewed by the courts, District Attorneys's office or
22 others to identify the police departments which don't
23 seem to be requesting EPOs, and to attempt to provide
24 follow-up training and assistance to those departments
25 to help ensure that those EPOs are being issued to the

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1 domestic violence victims who so desperately need them.

2 With regard to Recommendation No. 10, which
3 promises reasonable and timely access for review of
4 applications for restraining orders, we want to
5 emphasize that this recommendation is critical.
6 Particularly in counties that are geographically
7 dispersed, in general, making it possible to email
8 and/or fax in requested orders to the court would make a
9 huge difference to domestic violence victims needing
10 protection, as would making it possible for them to
11 receive copies of completed orders back by fax or email.

12 This is especially true for litigants with
13 disabilities, those who lack transportation, those whose
14 abusers monitor their movements or whereabouts, those
15 whose children need to be dropped off or picked up from
16 school or day care at specific times, and those who
17 stand to lose their jobs if they miss work attempting to
18 access the courts.

19 With regard to Recommendation No. 13, which
20 concerns the service of process in restraining order
21 cases, we strongly support the recommendations that are
22 being made, which again are particularly important -- of
23 particular importance to pro per litigants who have
24 difficulties accessing the court.

25 We encourage the Task Force to specifically

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1 adopt a rule of court providing that the time for
2 service of restraining orders should be reduced to allow
3 for service up to 5 days prior to hearing with a
4 response due 2 days prior to hearing. This practice is
5 standard in many, many jurisdictions but not in others.
6 In fact, in some counties, some of the courts in the
7 county will do the 5-day notice; and others, in the same
8 county, say that it must be 10.

9 This is another area -- actually, one of the
10 things that is involved in this is beyond the notice.
11 When restraining orders have to be served by the
12 sheriff's department, there are often lengthy delays in
13 getting papers from the court to the sheriff's
14 department. And because of cutbacks in sheriff's
15 department funding, our clients have frequently had to
16 reissue and reissue and try again and again and again to
17 meet these current notice requirements in the cases. So
18 that proposed rule would make a big difference.

19 We also strongly support Recommendation 16,
20 which is -- which encourages courts to enter orders
21 regarding child support and spousal support at the first
22 restraining order hearing.

23 One of the things that our clients frequently
24 encounter -- this is even more true for the pro per
25 litigants -- is that the judges in the restraining order

1 hearings frequently only issue orders regarding the
2 underlying request for the order itself, and they don't
3 deal with all the other requests that have been made in
4 the restraining order request, particularly those
5 regarding child support and spousal support, attorneys
6 fees, 3044 finding requests, et cetera.

7 And the proposed recommendation could help
8 remedy that problem.

9 The recommendation could go further, though, by
10 providing that judges handling domestic violence matters
11 should be trained in calculation of support, and if they
12 had courtrooms equipped with the computers needed to
13 make support calculations. Many of our satellite courts
14 do not have any of the systems in place to facilitate
15 orders being made, and I think that's part of the reason
16 that we don't see those other orders being made. And as
17 a result, we repeatedly see that it may take months for
18 domestic violence victims to get support orders in place
19 due to delays in the courts responding to these
20 requests.

21 And as we all know, if the victim of domestic
22 violence can't feed and shelter herself and her
23 children, as she attempts to put these orders in place
24 and assure their physical safety, she is much more
25 likely to return to an abusive partner.

1 With regard to Recommendation 19, Bay Area
2 Legal Aid also supports providing all TRO applicants
3 with a right to a hearing regarding their restraining
4 order request.

5 We've experienced several instances of judges
6 refusing to set restraining orders for hearing,
7 including one judicial officer who literally utilized a
8 rubber stamp to dismiss restraining order cases in this
9 case. We currently have two appeals pending in the
10 First District Court of Appeal on this issue, and we
11 believe that there is no legal authority for courts to
12 restrict restraining order actions in this manner.
13 Litigants who are pro per, and limited-English-speaking
14 litigants in particular, may have particular difficulty
15 setting forth the detailed reasons for their restraining
16 orders in their applications and should be given the
17 opportunity to appear in court to explain the need for
18 their orders, even if some or all of their temporary
19 orders must being denied pending hearing.

20 Finally, regarding Recommendations 26 and 27,
21 which have to do with court interpreters, we strongly
22 support the recommendations regarding the provision of
23 interpreters in domestic violence matters, including the
24 family court services mediation sessions and self-help
25 settings. Many of our clients have run into

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1 difficulties in those areas.
2 And while we acknowledge the high cost involved
3 in providing these services, we also -- we'd like to
4 urge the Task Force to go a step further in its
5 recommendations providing that needed interpretation be
6 continued throughout the custody and support hearings
7 related to the domestic violence case. Because one of
8 the things that's happening in some of the counties
9 where we practice is that while there will be an
10 interpreter provided for the initial restraining order
11 hearing, at the end of that hearing, when additional
12 hearings are scheduled on the custody or
13 visitation-related matters, the litigants will be told
14 that they will be responsible for bringing in their own
15 interpreters next time in the follow-up hearings.
16 And we've seen some really horrific results,
17 including one case where a 15-year-old son was asked to
18 interpret for his mother and his stepfather in a
19 domestic violence case in which he himself had been a
20 victim, and another case in which a volunteer
21 interpreter who was actually pulled from the audience in
22 the courtroom and asked to help in a case proceeded to
23 attempt to convince the pro per litigant involved to
24 drop her restraining order, sharing her own experience
25 in this arena and encouraging her not to pursue it,

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1 telling her that there were better ways to deal with her
2 problems.
3 So thank you very much for your time. I'm out
4 of time. Bay Area Legal Aid will be presenting its
5 written comment as well, and we thank you very much.
6 JUDGE KAY: Thank you. Any questions at this
7 point?
8 JUDGE BORACK: I have one brief question.
9 We have heard some complaints, for want of a
10 better word, regarding the lengthy forms that need to be
11 filled out and the difficulty that that creates for
12 victims in seeking a restraining order.

13 You've indicated that there is a need for the
14 courts to address child support and spousal support
15 issues.

16 Do you have any suggestions as to how the
17 information that is necessary for a judge to make that
18 decision could be presented to the court without
19 creating greater difficulties?

20 MS. ROBERTS: One possibility I think would be
21 for people who have made those requests to be told that
22 they need to arrive at the courthouse, say, an hour
23 before the hearing time in order to give them time to
24 meet with facilitators who will help run the different
25 calculations of support that are being requested.

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1 That would only be possible, however, if both
2 parties have provided information about their income and
3 expenses prior to that meeting.

4 We in Contra Costa County have succeeded in
5 getting the courts to now stamp all restraining order
6 requests, and I've seen this in Alameda County and some
7 other counties as well, instructing the parties to
8 provide income and expense declarations as well as their
9 most recent pay stubs. And I think that that would be
10 really very helpful.

11 And when the other side doesn't end up
12 submitting those, it would put the court at least in the
13 position of having a sense from the party who's asking
14 of what the income of the other party is, what their own
15 situation is, and issuing temporary orders that can then
16 be modified if they're based on incorrect information.

17 JUDGE KAY: All right. Thanks again.

18 Ms. Kallsen?

19 --o0o--

20 COMMENTS BY MS. PAMELA KALLSEN

21 MS. KALLSEN: Good afternoon. It's an honor to
22 be here today, and I'd like to echo everyone else's
23 comments and applaud you for all the wonderful work that
24 went into these recommendations, and especially the
25 thoughtfulness that you put behind each one of them.

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1 To put my comments in context, I'd like to take
2 a moment to frame our environment in Fresno county, just
3 briefly.

4 First our agency, the Marjaree Mason Center,
5 has three domestic violence shelters located in Fresno

6 County, with a population of 900,000 people. Our
7 emergency shelter houses 93 women and children, all in
8 one facility.
9 Our two transitional programs, one located in
10 the rural part of Fresno County, will support up to 50
11 women and children.
12 Our agency offers free legal options, classes
13 on a weekly basis, court accompaniment, and we have five
14 victim advocates housed with the Fresno Police
15 Department and the Sheriff's Department.
16 We have also developed a very innovative
17 program where we have recruited private practice
18 attorneys who represent our clients on a limited scope
19 basis and pro bono basis for restraining order hearing.
20 In Fresno County, our law enforcement agencies
21 annually respond to over 8,000 calls for assistance in
22 domestic violence incidents. Our Fresno County Superior
23 Court system has two dedicated domestic violence court
24 sessions per week, located in our main courthouse in the
25 City of Fresno and with an average case load of 70 cases

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1 per week.
2 In 2002, there were over 1200 domestic violence
3 filings; and in 2006, there were almost 19,000 domestic
4 violence filings, which is about a 33 percent increase
5 over that period of time.
6 There is a great need in our county for
7 additional courtrooms and also additional judges, as you
8 probably are aware. We do have two small satellite
9 courtrooms in the rural areas. However, they do not see
10 domestic violence cases.
11 Our court leadership is spectacular. In the
12 last 2 years, they have taken major steps in improving
13 our systems and working collaboratively with the
14 community-based organizations and law enforcement to
15 ensure the safety of all people who are seeking
16 assistance from the courts.
17 In reviewing the draft guidelines, I was really
18 pleased to understand that our local courts are already
19 well on their way to meeting most of your
20 recommendations. And we have also identified a lot of
21 the things collectively and collaboratively and have a
22 wonderful working relationship.
23 With input from the members of our domestic
24 violence roundtable and some of our surrounding rural
25 communities and other counties that weren't invited to

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1 be here today, I'd like to offer a few comments, if I
2 may, on the question -- and some questions that we have
3 related to your proposed guidelines.
4 As far as the use of temporary judges, we would
5 like to suggest that this area be further defined, if
6 you can. For example, we weren't sure whether this
7 applied to commissioners as well as pro tems. It
8 doesn't --
9 JUDGE KAY: Not intended to apply to
10 commissioners.
11 MS. KALLSEN: Okay, great, thank you. Because
12 we knew that -- we have a very special commissioner who
13 serves on a temporary basis, and so we wanted to
14 acknowledge that.
15 Information and resources for the party. We'd
16 love to see this comprehensive list and information
17 packet be an automatic part of the restraining order
18 packet instead of being needed to be requested by the
19 victim.
20 Oftentimes what we find is the victim gets in
21 there, just asks for paperwork, and then didn't realize
22 that they could also ask for references or referrals to
23 other agencies and support systems that may be able to
24 assist them.
25 Under family law facilitator/self-help center,

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1 it would be helpful in the many of our diverse counties
2 to encourage the centers also to develop materials and
3 information for the cultural communities within the
4 service area, and to ensure that the information
5 provided through the centers be updated at least
6 annually and in coordination with the DV coordinating
7 councils. Through the years, as you all know, there are
8 so many changes. People can come and go and agencies
9 come and go, and to have it annually updated would be
10 really helpful.
11 On the counseling component, this may or may
12 not fit here, but what our membership wanted to bring
13 forward as an option, it may be that we can refer
14 clients to more educational types of programs versus
15 counseling. Sometimes just helping them go to an
16 educational forum on domestic violence will help them
17 start to see that they are not alone, that maybe they do
18 need further help in counseling, and then can be guided
19 into counseling from that point.
20 On No. 11, notice in ex parte proceedings.
21 Fresno County does not hold ex parte proceedings, but
22 some of our neighboring rural counties do. We're
23 pleased that the guidelines recommend giving the court
24 case-by-case discretion in issuing a protective order

25 without notice of service by taking into account the

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1 level of danger of the applicant.

2 In the rural areas, the perpetrator is often
3 difficult to serve, because they tend to go underground
4 and they can't be found, for some reason, until after
5 the hearing. There are also fewer law enforcement
6 resources available to provide the service notification.
7 Continuances in these cases create hardships not only
8 for the victim, but also for the court calendar.

9 We would like to note that there may be one
10 potential unintended consequence in these cases. There
11 are more and more abusers initiating the restraining
12 order process and alleging the true victim is the
13 perpetrator. If a charming abuser gets into the courts
14 with no service, it may adversely affect the true victim
15 and potentially create opportunities for the abuser to
16 entice the victim into a situation that leads to another
17 arrest of the victim.

18 One possible way to minimize or avoid the
19 situation would be to develop a standardized danger
20 assessment tool for the courts and the victim advocates
21 to be used in these case.

22 No. 19, on the right to hearing. We agree that
23 this gives the victim a better chance of telling their
24 story, since they often do not understand the
25 requirements of the courts for a restraining order. In

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1 rural areas where there are fewer advocacy services
2 available, this will be a better opportunity for the
3 judge to solicit the extent of the abuse and more
4 adequately provide protection for those unable to write
5 or articulate the complete picture of the situation.

6 No. 23, withdrawal or dismissal of applications
7 for restraining orders.

8 In criminal court cases, the standard practice
9 in Fresno County is to allow the protected person more
10 time to discuss this option with a victim advocate on
11 the -- and on the criminal court side, what often our
12 judge does is requires the victim to take a 12-week
13 class in Domestic Violence 101 before they will consider
14 dropping or rescinding, lifting the restraining order.

15 On our family court side, the judge will ask
16 the victims step out and speak to an advocate so the
17 advocate can explain the situation and what the

18 consequences of lifting that restraining order might be.
19 Oftentimes there is a common misperception of
20 the victims that they believe the restraining order will
21 not allow the abuser to see their children. And when
22 the advocate is able to explain that the restraining
23 orders do not prohibit visitations, the victim often
24 changes their minds.
25 On the criminal court side where they do attend

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1 the 12-week classes, over 50 percent of the victims do
2 not proceed with asking to have their restraining order
3 lifted.
4 Courtroom security, No. 24. This is where we
5 could benefit in Fresno County from additional resource
6 allocation. Our hallways are often filled with drama
7 and explosive potential while the bailiff is inside the
8 courtroom through the double doors and does not hear
9 everything going on outside.
10 The other unfortunate situation we witness is
11 the attorney for the alleged abuser taking on the role
12 of his client to intimidate the victim. The victim will
13 come to an agreement with the attorney without being
14 fully informed of their options or leave the courthouse
15 without facing their abuser in the court, and without
16 hope of ever changing their situation.
17 And No. 40, the non-CLETS restraining order.
18 We are in total support of that.
19 So again, I thank you for the opportunity to be
20 here today, and I'd be happy to entertain any questions
21 that you might have of me.
22 JUDGE KAY: Thank you very much. Are there
23 any? No.
24 All right. Thanks to all of you. We're
25 running just a bit late. It's 12:15. We will convene

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1 promptly at 12:45 after lunch.
2 (Recess from 12:19 p.m. to 12:54 p.m.)
3 --o0o--
4 AFTERNOON SESSION
5 JUDGE KAY: All right. We'll start with the
6 afternoon session, beginning with the enforcement of
7 orders for the relinquishment of firearms.
8 This is our third component. This aspect of
9 our hearing today is especially critical to public
10 safety. Throughout the country, courts and justice

11 system entities are grappling with ways to ensure
12 compliance with firearms restrictions and relinquishment
13 requirements in DV proceedings, at the same time
14 consistent with the rights of the defendant.

15 Studies show that most deaths due to domestic
16 violence occur as a result of use of a firearm. As I
17 invite the speakers to this component to step forward, I
18 will introduce you.

19 Ms. Elaine Tipton, Deputy District Attorney,
20 San Mateo County. Yes, please, in the front row.

21 Ms. Tipton is a key participant in the
22 development of San Mateo County's Domestic Violence
23 Firearms Compliance Program created in the offices of
24 the San Mateo County Domestic Violence Council and with
25 the leadership of Judge Miram, who sits on our task

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1 force. It's funded in part by the Department of
2 Justice.

3 Ms. Lauren Zorfas. Ms. Zorfas is a family law
4 facilitator for the San Mateo Superior Court and is also
5 a participant in San Mateo's Firearm Compliance Program.

6 Ms. Kate Killeen. Ms. Killeen is the Deputy
7 Executive Director of the California District Attorneys
8 Association, focusing on crimes against persons and
9 victims services.

10 She is a director of the Violence Against Women
11 Project at CDAA. Ms. Killeen was a prosecutor for 16
12 years in the Sacramento District Attorney's office and
13 headed the Domestic Violence Division for 5 years.

14 Finally, Mr. Donald Kilmer, Jr. Mr. Kilmer is
15 in private practice in San Jose and is a recognized
16 expert on constitutional provisions relating to
17 firearms.

18 Ms. Tipton, will you please proceed?

19 --o0o--

20 COMMENTS BY MS. ELAINE TIPTON

21 MS. TIPTON: Thank you, Your Honor. And thank
22 you, honorable members of the Task Force for allowing me
23 the chance to speak.

24 As a prosecutor of 28 years who has spent the
25 last 14 of those years focusing on domestic violence

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1 issues, I thank you for the opportunity to speak
2 particularly on the firearms relinquishment.

3 And I'm going to direct my comments most

4 specifically to the criminal protective piece of that,
5 because I know Mr. Zorfas is going to be covering the
6 civil and family law aspects.
7 Actually, what really galvanized my attention
8 to this issue is a document that you yourselves
9 disseminated. And it was a series of articles that were
10 published in the Orange County Register, which then AOC
11 disseminated statewide, and somewhere in my travels I
12 came across those articles. And there was one story in
13 particular about a young boy named Evan Nash, who was
14 murdered by his father within the first 24-hour period
15 that he had been ordered to have no contact with his son
16 and ordered to surrender any firearms that he had.
17 So with that sort of backdrop I became very,
18 very suddenly just compelled and determined to see
19 what -- collaboratively and individually, what ideas we
20 could come up with to beef up what I considered to be
21 one of the most disregarded orders any judge ever makes
22 and, ironically, one of the most important orders any
23 judge has the power to make and in fact is mandated to
24 make in the State of California.
25 This is an order that each of you makes,

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1 presumably, either in criminal court or in family court,
2 if you sit there, every time you issue a criminal
3 protective order or issue a restraining order, because
4 you're mandated to do so.
5 So addressing myself specifically to first the
6 No. 12 proposal in the short list, which is to set a
7 review hearing. As I understand that proposal, it
8 would -- the suggestion is that any court who issued a
9 criminal protective order in the context of a domestic
10 violence case would then actually set on its calendar 48
11 hours out a hearing to determine whether or not the
12 prohibited person had filed their proof of surrender
13 with the court.
14 I can't even fathom what that would do to the
15 dockets of the courts in every county. I know in our
16 county it would be onerous, it would be crushing, and I
17 think as a result, if it's unmanageable and unwieldily,
18 it's probably not going to happen or work very
19 effectively.
20 I do know that -- I see pretty religiously in
21 our county that the authority of PC 977(a)(2), which
22 absolutely requires a criminal defendant to be present
23 in a misdemeanor domestic violence case to receive or be
24 advised of the conditions of the 136.2 order, that
25 that -- if that statute is always utilized by the judge,

1 there should never be a situation where a defendant is,
2 quote unquote, not served with a CPO, because he has to
3 be personally present any time a CPO is issued so that
4 he can be told. His lawyer can't, you know, pass on the
5 word. He or she has to be there.

6 So assuming that he or she is personally
7 present when the order issues, if the court were to set
8 a hearing 48 hours out and this defendant has in fact
9 under law 48 hours to surrender the weapon, I don't know
10 what type of evidence could even be assembled in that
11 short period of time to determine whether the defendant
12 has complied with something that he may or may not have
13 any duty to file.

14 And that kind of brings us to the heart of the
15 problem, is, that the way the statute is worded now, you
16 have this large pool of people who are ordered to do
17 something only if they possess weapons. And because the
18 court really at this point has no way of knowing whether
19 or not they possess weapons, the notion of setting a
20 hearing to determine whether or not they've filed a
21 document proving that they surrendered those weapons I
22 think could be an almost pointless task.

23 I would suggest that maybe at least for
24 starters -- I like the idea of a hearing. I think it
25 could make sense, but only if you're setting hearing for

1 somebody where there's at least some evidence to believe
2 the person does have a weapon.

3 And to the extent that a lot of the proposals
4 have to do with either the courts or the DA or somebody
5 running these defendants through the Automated Firearms
6 System, that if as a judge issuing a criminal protective
7 order pursuant to 136.2 you had along with that order
8 information that this particular defendant had a weapon
9 registered to him or her, that for that person, it would
10 make sense to set the hearing out, I would say, maybe 72
11 hours, because if he's got 48 hours to file the proof of
12 surrender, you may find yourself in a situation where
13 the full 48 hours hasn't even run. So maybe 72 hours
14 would make more sense.

15 But something perhaps more proactive and more
16 practical would be, I think, to make the 136.2 order an
17 order that would issue in the alternative, where a
18 defendant would be ordered to either show -- file with
19 the court within 48 hours proof that he or she had
20 complied with the requirement that he or she relinquish
21 firearms by either surrender or sale; or, in the
22 alternative, file a declaration or verification of

23 nonownership or possession.
24 I know there's been discussion both in your
25 proposed procedures and practices, and I've heard

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1 discussion amongst members of our own court about the
2 possible Fifth Amendment issues that are triggered when
3 a judge asks someone, do you have a weapon. But I would
4 submit that there are no Fifth Amendment issues
5 triggered by a requirement that a person do one or the
6 other. Either surrender a weapon that they do have or
7 declare that they don't own or possess weapons.

8 So if the 136.2 criminal protective order --
9 and obviously, this would be both a policy decision and
10 a form decision -- ordered the defendant to do either
11 one or the other within 48 hours, I think any court's
12 technology system could be designed pretty quickly to
13 spit out on either a daily or a weekly basis, linked to
14 every time a 136.2 order issues, has that -- under that
15 court case number, has there been a filing of one piece
16 of paper or the other within 48 hours.

17 Creating a system like that I think would
18 significantly shrink the pool of potential noncompliant
19 people that would then enable some further action to be
20 taken.

21 In our county, as in the introduction that you
22 gave me or alluded to, our county is presently embarking
23 on a collaboration with the Department of Justice and
24 our county sheriff's office to form an enforcement
25 compliance unit for firearms relinquishment in both

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1 civil and criminal domestic violence cases.

2 We've talked a lot about, just how do you get
3 your hands around that? How do you go after in our
4 county, say, 2000 people each year, about a thousand in
5 criminal court and a thousand in family court, who are
6 ordered to surrender weapons and show proof thereof
7 within 48 hours? How do you know whether they have
8 weapons or not, other than just the initial AFS printout
9 that may or may not even be reliable?

10 Apparently we're not -- I'm not the first
11 person to have thought of that, because I submitted
12 something that I came across, I'm not even sure where I
13 came across it, from Glenn County where they have put
14 together something along the lines, they call it a
15 verification, as part of the material I submitted. I

16 don't know if they're using it yet.
17 I think in San Mateo County our courts would
18 certainly be willing to do that. It would potentially
19 shrink the pool of people who then could be
20 investigated. It would enable the court and law
21 enforcement to identify and focus on those suspected of
22 being in violation of the relinquishment order, because
23 they would either have not filed proof that they
24 relinquished, nor declared that they had nothing to
25 relinquish.

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1 Law enforcement officers could then attempt to
2 locate these persons, assuming that they are out of
3 custody as opposed to still in custody, and in both
4 their newly -- the new authority that law enforcement
5 now has to make immediate demand.
6 I mean, law enforcement under 6389 now has the
7 power, if somebody is the subject of this order, to
8 demand immediate surrender of the weapons and get
9 immediate surrender. So it would work well and work
10 hand in hand with law enforcement being proactive in
11 trying to go out and enforce your orders.
12 Alternatively, it -- my boss would probably
13 frown if he heard me say this -- it would empower the
14 District Attorney to have a very clear-cut ability to
15 prosecute 166(c)(1) violations, because 166(c)(1)
16 constitutes -- is a charge that we file any time anybody
17 violates a 136.2 order. So if the violation of the
18 order consists of failing to file one or the other of
19 the two documents, that could potentially subject that
20 person to a rather swift prosecution under 166(c)(1),
21 and it would be obviously much more feasible to prove
22 that the person failed to file one of those two
23 documents than it would be to prove that this person
24 failed to relinquish or surrender firearms without being
25 able to affirmatively prove that he or she has them or

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1 had them and failed to relinquish.
2 So that's sort of a big ticket item that I'm
3 proposing. I don't know if the Task Force has
4 considered it, but I don't necessarily see anything that
5 would preclude that being built in.
6 I have probably a little bit more radical
7 proposal, again, in the criminal court context only,
8 which is to consider the possibility of imposing search

9 and seizure on a defendant at the time he is arraigned.
10 And I assume that most of your CPOs are issued at the
11 time of arraignment, that when the defendant is ordered
12 to surrender and not own or possess firearms, that the
13 court also consider imposing -- whether the defendant's
14 being released on his own recognizance or bail is being
15 set, I believe that there is legal authority under both
16 scenarios -- I'm sure it will be tested, but I believe
17 there is legal authority to impose search and seizure.
18 And the analogy I'd like to point out to you
19 all is, how many of you as criminal judges have ordered
20 a defendant who is being released on bail, not OR'd, to
21 abstain from illegal substances, and then ordered
22 chemical testing as a means of enforcing that order that
23 you've just made?
24 In this case scenario, you are mandated by the
25 legislature to order the individual to not own or

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1 possess firearms, yet you don't expressly -- you haven't
2 been expressly vested with the power to order the
3 mechanism or the tool by which that order can be
4 enforced.
5 1270 does actually allude to conditions,
6 whatever conditions, quote, may be appropriate. Setting
7 bail and conditions if any that are appropriate
8 associated with the case.
9 Obviously, they cannot be unreasonable
10 conditions, because by the mere act of posting bail --
11 the courts distinguish the person obviously who's
12 released on bail from a person who's released on their
13 own recognizance.
14 I don't think there's any question at all that
15 if a DV defendant were to be OR'd, that not only does he
16 have to be ordered to relinquish firearms, he can very
17 easily be ordered to be subject to search and seizure.
18 This obviously would give law enforcement a
19 huge tool, huge tool, in enforcing the order that you
20 make. But I do believe that there is both statutory and
21 some case authority, which I've cited -- none -- it
22 doesn't actually go as far as saying what I'm proposing,
23 but I believe both under 1270, a reasonable
24 interpretation of 1270, that search and seizure is an
25 option, and that there is precedent for it under the

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1 analogy that I've just suggested, which is abstention

2 and chemical testing, frequent conditions ordered when
3 somebody is released on bail.

4 I also came across when I attended a nationwide
5 conference earlier last year in Los Angeles, when this
6 whole idea was being brainstormed, believe it or not,
7 North Dakota had a model, which I've attached again to
8 the paperwork that I've submitted, in which an
9 individual who is released on bail is -- basically,
10 signs off on a checklist acknowledging a variety of
11 things that are associated with their release on bail.

12 And it's sort of an alternative form. It's
13 both an OR release form and a bail form. And amongst
14 the laundry list of things that the defendant checks off
15 are that he or she acknowledges that he cannot own or
16 possession any firearms, and he or she acknowledges that
17 he or she is subject to search and seizure.

18 So it's in essence a waiver. I'm sure there
19 would be scenarios where a defendant would decline to
20 sign that. But it's another model that I think could
21 and should be considered.

22 I'm going to just briefly move on and touch on
23 a few other comments and suggestions that I noticed when
24 I was reviewing your suggested practices.

25 At -- on the short list at page 19 there's a

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1 suggestion of a need for legislation regarding requiring
2 that law enforcement officers inquire about the presence
3 of firearms when they go out on a DV call, and that they
4 seize those firearms.

5 And I just wanted to point out that that
6 authority, that mandate, already does exist in the Penal
7 Code under 12028.5. It's really more of a training
8 issue to get police officers. So in the 13700, et. seq.
9 sections of the Penal Code, police officers are required
10 to report that they've done that, to document that
11 they've done that.

12 The 12028.5 actually tells police officers,
13 when you go out on a DV call, you shall, if you deem it
14 appropriate for your safety or the safety of others, you
15 shall inquire about the presence of weapons, and you
16 shall seize any weapons in plain view or by consent or
17 any other lawful search.

18 And that last phrase is again an area where I
19 don't think it's quite been tested yet, because I've
20 broached that subject, what constitutes "or any other
21 lawful search" beyond plain view and consent.

22 So I just wanted to point out that I think that
23 authority is already there. I think it's a training
24 issue for law enforcement, and we're very proactive
25 about that in our county.

1 I'd like to also quickly talk about emergency
2 protective orders. The bane of any judge's on-call
3 existence, I know, the many calls in the middle of the
4 night.

5 However, it's a powerful tool. And
6 unfortunately, I don't think the form as it presently
7 appears makes it clear to a police officer that the
8 service of an EPO on an individual, a cop out on a DV
9 call who gets the on-call judge who requests the
10 issuance of an EPO and then who gets that EPO and serves
11 the defendant right then and there, or at that point the
12 accused, batterer, at that point in time, at that moment
13 in time, the EPO is the same type of restraining order
14 under Family Code 6218 that triggers immediate surrender
15 or the requirement that the person, prohibited person,
16 not own or possess weapons.

17 It doesn't say that anywhere on the face of the
18 EPO. It's buried in boilerplate language on the back
19 side of the EPO, and I don't believe most law
20 enforcement officers realize that the issuance of an EPO
21 triggers that same prohibition against owning or
22 possessing weapons.

23 The beauty of that is, is that at that instant
24 moment in time when the defendant is being served with
25 the EPO, the officer now has the power right then and

1 there to then demand immediate surrender. And usually,
2 that whole sequence of events is happening out at the
3 house, at the scene where he's being arrested.

4 So I think a lot could be done with the EPO
5 form itself to make it crystal clear to the officer
6 who's out at the scene that he needs to do this, that
7 the judge is ordering that as soon as the defendant is
8 served with the EPO, that the judge is ordering that the
9 defendant cannot own or possess and must surrender
10 firearms at that point in time, and that the officer is
11 empowered to demand immediate surrender of those.

12 Also, something that our county committees have
13 discussed repeatedly, if you're in the business of
14 modifying the EPO form, we would request -- right now
15 there's just a real disconnect between what happens with
16 the EPO once it's served on the defendant. It has such
17 a short shelf life. 5 court days or 7 calendar days,
18 that usually it takes several days for it to ever get
19 entered in the DVROS, because it's not clear whose

20 responsibility that is.
21 I would submit and suggest that if the EPO form
22 says clearly on its face that the agency, the arresting
23 agency who has obtained the EPO from the judge must
24 enter the EPO within 1 business day into DVROS, that
25 will eliminate any confusion about whether or not it's

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1 the police agency's job or the court's job.
2 And it really is -- makes a whole lot more
3 sense for the police department to do it. They have
4 access to DVROS, they have people who know how to do it,
5 and they're the ones that are getting the order in the
6 middle of the night.
7 It should also give a little bit more guidance
8 about how to file the order. Because if we as a DA want
9 to order a certified copy of an EPO so that we can
10 prosecute somebody for violating it, as batterers often
11 do, and make a phone call from the jail while they're
12 still in custody, but they are the subject of an EPO, a
13 lot of times the clerk's office has never even received
14 the EPO itself. We can't even order a certified copy of
15 it. And I think that's in large part due to the fact
16 that a police officer -- the order itself doesn't give a
17 lot of guidance there. So I think that ought to be made
18 more clear.
19 If I can just wrap up with a couple suggestions
20 about the 136 CPO form itself. I've sat in court
21 thousands of times and listened and watched judges issue
22 the order. And I think one of the biggest fundamental
23 problems is, depending on who's doing the arraignment
24 calendar and how familiar they are with this provision,
25 they may not actually be aware that the weapons

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1 relinquishment provision is mandatory. And now it's
2 even mandatory even if they're not ordering contact or
3 conduct restraint.
4 So I think if the order itself could clearly
5 state on the face of the form to serve as a reminder to
6 the judicial officer that's issuing that order that the
7 firearms relinquishment is mandatory upon issuance of
8 the CPO, even if the judge is not ordering restriction
9 of conduct or contact. And that's new under
10 136.2(a)(7)(b).
11 Secondly, I know that most judges do have, you
12 know, a script, and there's usually a bench card for

13 doing arraignment calendars.

14 What I see now in our county is, a lot of
15 judges are very dialed in to articulating verbally the
16 conduct and the contact restrained, but they are not
17 orally and forcefully articulating -- they're not even
18 mentioning the firearms relinquishment. I mean, they
19 tell the defendant, you're the subject of this
20 restraining order, you may not have contact with or you
21 may not annoy, harass, molest, et cetera, but they skim
22 over the firearms provision. They don't -- they don't
23 say it out loud.

24 And I think the mere act of the judge saying it
25 out loud, even though it does take a little extra time,

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1 saying it out loud, would go a long way toward enforcing
2 it and emphasizing the importance of it to the person
3 who's being served with the order.

4 I know all of you -- through this committee
5 work that you've done so diligently and through your
6 firsthand experience on the bench, you've all heard many
7 firsthand accounts of women and children being murdered
8 by abusers who were illegally in possession of firearms,
9 and illegally in possession of them simply because they
10 were restrained persons, either by virtue of a CPO or
11 otherwise. I too as a prosecutor have seen it very
12 painfully and very firsthand.

13 What really galvanized me was the story about
14 Evan Nash, and the story that I thank you for sharing
15 with me. I have never ever heard that story, and it
16 broke my heart.

17 The legislature has seen the connection very
18 clearly and has both vested and mandated the courts with
19 the responsibility to order that these individuals
20 relinquish and surrender their firearms.

21 And on a daily basis, you are making decisions
22 when you issue those orders that are designed not to
23 deprive anybody of their rights; they are designed
24 solely to save human lives through the act of
25 surrendering firearms.

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1 All efforts to make these orders not only just
2 in the abstract enforceable, but to actually enforce
3 them, to actually enforce the orders, so that no judge
4 ever has to reflect in a somber moment on why someone as
5 innocent as Evan was murdered with a firearm that that

6 judge had ordered to be surrendered, and that there was
7 no mechanism in place to enforce your order.
8 We simply have to -- we have to be aggressive.
9 These orders are being issued in the hundreds of
10 thousands in the State of California because every judge
11 is mandated to do so. And if we aren't more aggressive
12 and proactive in making these orders not only
13 enforcement but actually and truly enforcing them, many
14 more innocent people will be murdered by firearms.
15 So I thank you for the opportunity to speak on
16 that.
17 JUDGE KAY: Very interesting comments.
18 Anyone have any questions of Ms. Tipton?
19 Thanks again.
20 All right. Ms. Zorfass?
21 --oOo--
22 COMMENTS BY MS. LAUREN ZORFAS
23 MS. ZORFAS: Good afternoon, honorable members
24 of the task force. Thank you so much for this
25 opportunity to speak with you today.

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1 As Ms. Tipton mentioned, I'm going to be
2 keeping my comments mostly within the civil arena of the
3 firearms relinquishment provision of restraining orders.
4 And after listening to her, I'm going to be echoing a
5 lot of what she has said.
6 But I'd like to start by addressing first the
7 section of proposals in the firearms section entitled
8 "Communication and Education."
9 Although these did not make it on the short
10 list, I believe that Recommendation No. 1,
11 "Communication with Justice System Partners," is perhaps
12 one of the most important of these recommendations.
13 Although it is the court that makes the relinquishment
14 order, the actual relinquishment and the storage, which
15 is a whole other huge issue, of the firearms is strictly
16 within the realm of the criminal justice partners.
17 Similarly, while the court may seek to monitor
18 compliance with the relinquishment orders, again, the
19 bulk of the enforcement of these provisions is likely to
20 fall on law enforcement.
21 Aside from the criminal justice partners, I
22 think it is critical that there be ongoing dialogues
23 among all of the agencies and entities dealing with
24 domestic violence survivors their families, including
25 those agencies that deal with the batterers.

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1 This communication, which I believe goes hand
2 in hand with education, is essential in crafting a plan
3 to get the guns out of the hands of those who are
4 prohibited from having them.
5 One of the things I'd like to share with you
6 today is a project that our court is taking part in.
7 It's a unique collaboration that's sponsored by the
8 Department of Justice to enforce the firearms
9 relinquishment provisions of restraining orders.
10 While work is still being done to finalize what
11 this project will look like, it has started with several
12 meetings where court staff, including members of our
13 bench, our local DV agency, the private defender, the
14 District Attorney's office, law enforcement
15 representatives from both the sheriff's office to whom
16 if the grant will be given, as well as the local police
17 departments, probation, Department of Justice staff and
18 representation from our County Board of Supervisors, got
19 together to look at this issue from several different
20 perspectives.
21 What we have been able to do with this
22 multidisciplinary approach is consider the problem in a
23 way that takes into account each agency or entity's
24 unique knowledge of a different part of the system.
25 While this project is still a work in progress,

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1 our hope is that we may develop a model for the state.
2 Whatever this model is, it will not come to fruition
3 without the input from a communication among the
4 aforementioned agencies.
5 A perfect example of this is what we are
6 looking at in terms of service of restraining orders.
7 Statistically, we know that the most dangerous time for
8 a domestic violence victim is just around the time she
9 asks for help from the court in the form of a
10 restraining order, making service of the order a
11 critical moment in the restraining order process.
12 However, the issue of affecting service is
13 clearly out of the hands of the court. Both the victim
14 and the court, to an extent, are relying on law
15 enforcement to ensure safety of the protected party
16 under the restraining order.
17 At the beginning of the section on firearms,
18 the Task Force notes that criminal justice entities
19 should consider seeking legislation that would require
20 law enforcement to inquire about firearms possession and
21 confiscate any weapons.
22 Apparently that went directly from your pens to
23 the legislators' ears, and Family Code Section 6389 was
24 amended as of the first of this year, allowing law

1 request immediate relinquishment. This new provision is
2 one of the areas we will be looking into with our
3 domestic -- with our Department of Justice project.

4 The possibility of seizing weapons at -- the
5 most dangerous time to the protected party is just as
6 the order is being served. Prior to this amendment, law
7 enforcement was only able to recite the provisions of
8 the restraining order to the respondent and advise that
9 firearms needed to be relinquished within 24 hours. And
10 24 hours has proven to be too long.

11 Subsection (c)(4), Family Code Section 6389,
12 also recommends that every law enforcement agency in the
13 state develop, adopt and implement written policies and
14 standards for law enforcement officers who request
15 immediate relinquishment of firearms.

16 In the spirit of the recommendations of this
17 Task Force, I want to again underscore the importance of
18 communication between the court and law enforcement and
19 strongly encourage courts to assist law enforcement in
20 any means appropriate in instituting these procedures.

21 Under procedures in the Task Force
22 recommendations, there are two recommendations, No. 7
23 and 8, regarding emergency protective orders. The EPO
24 is also often issued at a critical and dangerous stage
25 of the domestic violence case. It is in these moments

1 that the guns must be seized. And again, law
2 enforcement can use Family Code Section 6389 to serve
3 the EPO and request immediate relinquishment.

4 Certainly if there are allegations of firearms
5 in either the incident itself or based on
6 representations of the witnesses, the law enforcement
7 officer can be more specific about the request for
8 immediate relinquishment.

9 However, inquiring about firearms also raises a
10 sensitive issue that goes to the safety of the victim.
11 There are many times that a victim may be reluctant to
12 disclose not only the location of firearms, but whether
13 or not the respondent has any firearms at all. She may
14 have been threatened with those weapons in the past and
15 fear the repercussions of having the batterer have his
16 guns taken away at what will seem like her direction.

17 Often the best source for finding out where the

18 batterer keeps his firearms, or whether there are
19 firearms at all, is the victim. However, careful safety
20 planning should take place before any inquiries are made
21 of the victim as to the location of any firearms.
22 Consistent with the Task Force's
23 recommendations, there are several procedures that the
24 court can implement that can facilitate the
25 relinquishment of firearms.

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1 In San Mateo County we have instituted the
2 following: Every civil restraining order, or every
3 civil temporary restraining order that is filed in our
4 court is also filed with the DV-800 form, "What do I do
5 with my Gun or Firearm?" in both Spanish and English
6 attached to it. In addition, the DV-810 form, "Proof of
7 Firearms Turned in or Sold" is also attached to the
8 temporary restraining order.
9 We also utilize a separate, dedicated domestic
10 violence calendar. This is mentioned in the Task
11 Force's report under the DVPA restraining order section
12 and, to the extent possible, should be encouraged in
13 every court.
14 In San Mateo County, we have a team approach to
15 the calendar, utilizing a facilitator's office and our
16 local DV agency such that there is sufficient staff in
17 the courtroom to ensure that every self-represented
18 party leaves the courtroom with a copy of his or her
19 order.
20 In addition to a copy of the order, we utilize
21 volunteers to hand to the applicants, along with their
22 orders, the Judicial Council forms regarding enforcement
23 of the restraining orders and handouts related to the
24 service of the order if the respondent was not in court.
25 And the respondents are given the Judicial Council form

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1 entitled "Information for the Restrained Person."
2 But more closely related to the firearms topic,
3 each respondent is given a copy of the DV-800 and the
4 DV-810, the forms regarding information for
5 relinquishment as well as the relinquishment proof, and
6 they are orally advised by the volunteers after even
7 having been done so by the court, that they are under a
8 firearms restriction and must relinquish immediately.
9 In order to facilitate the process of gun
10 relinquishment, a letter was sent out to each of our 23

11 police departments in our county, alerting them of the
12 requirement that they be available for the surrender of
13 the weapons and to familiarize them with the forms.

14 This letter was signed by our supervising
15 family law judge and listed the number of a court
16 contact and a DA that they could call with any
17 questions.

18 One of the very innovative ideas in the Task
19 Force's recommendation is the proposal of a review
20 hearing and appropriate forms to be completed as set out
21 in Recommendations 17 through 20. As outlined in the
22 recommendations, the review hearing would be set to
23 monitor compliance with the relinquishment or sale order
24 and offer a "no longer in possession" form on those
25 cases where there is evidence of a firearm.

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1 The real issues with the review hearing are
2 that the court has truly no way of knowing whether the
3 respondent owns or possesses firearms, and there is
4 currently no mechanism for the court to know those who
5 do not own or possess a firearm.

6 In the case of a court learning about firearms
7 in possession of the respondent, the victim may be
8 reluctant to disclose, as I've already mentioned. Even
9 a search of the AFS database may not be fruitful,
10 because we all know that a large majority of these
11 respondents do not own registered firearms.

12 In terms of the court ascertaining whether or
13 not the respondent owns or possesses, short of directly
14 asking the respondent, which has serious Fifth Amendment
15 implications, there is no way for the court to
16 differentiate the gun possessors from the non-gun
17 possessors. What should be developed is a declaration
18 of nonpossession, as Ms. Tipton alluded to, whereby each
19 respondent who does not own or possess a firearm is
20 ordered to file this with the court if in fact they do
21 not own or possess a firearm.

22 Having this tool along with review hearing
23 would narrow the pool of noncompliant respondents
24 enormously and does not jeopardize the safety or
25 revictimize the victim by asking her to give testimony

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1 against her intimate partner batterer. It also does not
2 put the court in the position of asking whether the
3 respondent owns or possesses. Rather, it inquires into

4 the compliance with a term of the restraining order to
5 either show proof of relinquishment or state that they
6 do not own or possess.

7 The court could use this tool in a variety of
8 ways. For example, the court could calendar a review to
9 see if a form was filed and instruct the respondent that
10 the filing of either of these forms within a certain
11 time period before the hearing would then automatically
12 vacate the review hearing. With a carrot of avoiding
13 the reviewing hearing and the stick of a possible bench
14 warrant being issued, hopefully the filing of one of
15 those two documents would occur.

16 However, if there were no compliance, the court
17 could set a review hearing and make appropriate orders
18 as set forth in Recommendation 17 through 20.

19 JUDGE KAY: Could the court set a review
20 hearing even in the case of a declaration that was filed
21 that the court might have information to believe it was
22 not a true declaration?

23 MS. ZORFAS: I would think that the court could
24 certainly issue an order to show cause to say that the
25 court has evidence on new information that you do own or

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1 possess, and you would file this "I do not own or
2 possess" and inquire further into that.

3 While it would be incredibly cumbersome to hold
4 a review hearing on all cases for the issue of firearm
5 compliance, if at the outset the respondent was ordered
6 to file either the relinquishment or the declaration of
7 nonpossession in the temporary restraining order, this
8 would certainly limit the number of reviews to be heard
9 by the court. And if the proof of firearms sold or
10 relinquished form, instructions on how to sell and
11 relinquish, and a declaration of nonpossession were each
12 served with a TRO, there would be a first chance for the
13 respondent to comply with that order.

14 The court might take the approach to advise the
15 respondent at the hearing for the permanent restraining
16 order that either of the forms must be filed within 72
17 hours, and failure to do so will result in a referral to
18 law enforcement and/or the District Attorney's office
19 and allow follow-up with either of those agencies. In
20 this case, the court would take no affirmative action
21 and instead refer to those agencies.

22 As alluded to in the Task Force's
23 recommendations, this information could be forwarded to
24 law enforcement and/or the DA's office for follow-up.
25 And in fact, referring these cases to the DA's office

1 might be the best approach, as the failure to file
 2 either of these documents would be a violation of the
 3 restraining order subject to prosecution under Penal
 4 Code 166.

5 With the DA prosecution, the District
 6 Attorney's office, a proper investigating agency, could
 7 then decide whether the case warrants prosecution.
 8 Also, the defendant would be afforded legal
 9 representation should a Fifth Amendment issue arise as
 10 to failure to comply with the order.

11 One last item to note is the use of the
 12 immunity provision of Family Code Section 6389
 13 subsection (d), which could be requested by the
 14 defendant and would properly be done so in a criminal
 15 case where the DA could make any appropriate objections
 16 to such a request.

17 In closing, the issue of compliance with the
 18 firearms relinquishment provision and restraining orders
 19 is possibly one of the most difficult to tackle, both
 20 because of the potential danger involved as well as the
 21 Fourth and Fifth Amendment issues. And no matter what
 22 we do to address this issue, it is going to be a
 23 resource issue for somebody, either the courts, law
 24 enforcement or the DA. There's absolutely no way around
 25 that.

1 I want to applaud all of the work that the Task
 2 Force has done, and I'm honored that you've asked for my
 3 comments on this issue, and I'd be happy to answer any
 4 questions you have at this time.

5 JUDGE KAY: Any from members of the task force?
 6 Apparently not. Thank you very much.
 7 Ms. Killeen?

8 --o0o--

9 COMMENTS BY MS. KATE KILLEEN

10 MS. KILLEEN: Thank you for the invitation to
 11 speak here today. And it's been a privilege also to
 12 work with the AOC's Violence against Women Education
 13 Project Committee, where I've had the chance to work
 14 with some of you and discuss some of the proposals that
 15 are contained in the documents which I've reviewed.

16 And overall, I would express my support for the
 17 proposal and will focus by comments on some of the
 18 proposal in particular where potentially greater clarity
 19 and more discussion could be had to further refine those
 20 proposals.

21 Turning to page 19 on firearms relinquishment
 22 related to communication and education, I in particular

23 support that proposal and would encourage the court
24 leadership to work with domestic violence coordinating
25 councils to develop protocols within their local

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1 jurisdiction, and would also like to point out that the
2 Commission on Peace Officers Standards and Training last
3 year did develop a video tool as well as written
4 guidelines specifically on firearm relinquishment and
5 created scenarios to help train law enforcement. And so
6 that's a resource that could be used as a departure
7 point at the local level to spur discussions and further
8 development and application of -- within particular
9 court and law enforcement and other professionals
10 networks.

11 In addition, POST has developed a video project
12 on outlines on protective order enforcement and that
13 included demonstrations of emergency protective order
14 scenarios including conversations with the judges. And
15 having heard the prior testimony, that there may be need
16 to refine that further, but I believe that it does
17 address the firearm relinquishment issue in the existing
18 DVD.

19 So that also ties into Point 3, which is
20 education for law enforcement, so that it's consistent.
21 The huge challenge with education that I've found is, we
22 reach part of the professional community but not the
23 others, and people are not talking at the same level,
24 and it causes barriers to real effectiveness in
25 implementing the laws that are already on the books.

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1 With regard to Item 4, court access to state
2 and federal firearm databases, that's a crucial
3 component. And while we recognize, and it was
4 recognized in your introductory page to this section,
5 that a wide range of firearm possessions falls outside
6 of the registration scenario, where there are firearms
7 under registration, it's essential that we find that
8 out.

9 And in a study from United States Department of
10 Justice statistics, from 1994 to 1998, it was reported
11 that domestic violence misdemeanor convictions and the
12 existence of restraining orders were -- was the second
13 most prevalent cause for denial of firearm purchase
14 applications. So in that context, it's working.

15 Nonetheless, in a 2002 report to the House of

16 Representatives Committee on Judiciary, in another study
17 from 1998 to 2001, it was found that 2800 people had
18 successfully purchased firearms who did have misdemeanor
19 convictions and/or protective orders against them
20 wherein that information was not captured within the
21 national information crime database in the time during
22 which their background was being checked.

23 So there's still more work to be done in that
24 area, and it's essential that we work as a system to get
25 the convictions and the protective orders entered

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1 promptly into our databases that would be used as a
2 basis for checking when people are trying to get
3 firearms.

4 Turning to Item No. 10 at page 21, oral
5 advisement of firearm restrictions, I strongly support
6 the oral advisement. And while it's recommended in
7 Proposal 11 to also distribute a written information
8 sheet, it's clear from working with people over the
9 many, many years that go through a court system that the
10 supplemental oral advisement is really critical to
11 understanding what's going on. And simply handing
12 people advisements or requirements does not translate
13 automatically into ensuring that those advisements or
14 requirements are understood by the people that need to
15 understand them.

16 And in addition to the oral advisements as to
17 the existence of the firearm restrictions, advisements
18 as to the consequences of filing those restrictions
19 should be part of the advisement. And that includes
20 potential criminal consequences under both state and
21 federal law.

22 In Item No. 12, dealing with the review
23 hearings, it is stated that if there is evidence that
24 the defendant has possession of a firearm, the court
25 should set a review hearing. And the question there

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1 where more guidance could be developed would be what
2 threshold of evidence would be required in order to
3 trigger that review hearing so that review hearings
4 aren't scheduled in every possible case, which would be
5 impossible for the court logistically to manage, but
6 what threshold of evidence would be required to set a
7 review hearing.

8 The report also recommends asking the

9 protected -- or the restrained party if they are in
10 possession of a firearm. And while the -- this body has
11 addressed potential Fifth Amendment issues and
12 recommended that Fifth Amendment advisements be given,
13 it does appear that with all consideration in balance,
14 it is important to go forward with that question and ask
15 the individual if they have had a firearm not only on
16 just one occasion, but at multiple occasions, because we
17 all know that people may have a firearm one day and not
18 another day, or they may come into acquisition of a
19 firearm through a variety of different means.

20 In a paper entitled "Firearms in Domestic
21 Violence: A Primer for Judges" published in 2002 and
22 coauthored by Judge Carbone in New Hampshire, she
23 strongly advocated that questioning of the parties occur
24 about firearms at multiple stages in both civil
25 proceedings and in criminal proceedings and both the

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1 temporary injunctive level hearings and at the final OC
2 level hearings.

3 On Item 18, it is recommended that the court
4 should consider notifying law enforcement and the
5 prosecutor's office if there's credible evidence that a
6 person has potentially not complied with an order or is
7 in possession of a firearm and hasn't filed a receipt.

8 And it's unclear what the considerations would
9 be for the courts to exercise that judgment should
10 they -- or are there certain reasons where they would
11 not notify law enforcement and the prosecutor's office
12 if they find credible evidence that there's been a
13 failure to comply with the firearm restrictions, or in
14 what way will that discretion be exercised? And that's
15 an area where further discussion might be had with
16 reports on how to give guidance to the courts.

17 At this point I wanted to turn very briefly to
18 a couple of other areas of your proposals. And one
19 deals with criminal procedures. And at page 27, the
20 court -- or this proposal comments that the statutory
21 framework underlying Penal Code 1209.097 contemplates
22 adequate funding for probation to carry out their tasks.

23 And as the state audit report described in
24 November of 2006, the probation departments are
25 virtually underequipped to carry out their

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1 responsibilities, both in terms of certifying the

2 adequacy of better treatment programs and also the
3 compliance of individuals ordered to undergo -- to go
4 through those batterer treatment programs and ensure
5 that they actually do do so.

6 So funding is absolutely essential. And it's
7 also essential for the high-risk case loads so that
8 smaller case loads can be assigned to specialized
9 probation officers who can provide intensive supervision
10 and also designate points of contacts for victims and
11 other persons at risk to speaking with a probation
12 officer should there be conduct short of new crime
13 activity but which is in violation of the court's orders
14 so that they have a opportunity to report that activity
15 or that conduct and have action taken by the probation
16 officer.

17 At page 29, the guidelines address hearing
18 procedures as it relates to arraignment and bail. And
19 with regard to the hearing procedures, I just wanted to
20 add that there is some confusion as to when bail
21 hearings happen, or there's some disparity in practices
22 as to when they happen.

23 About 10 years ago in Sacramento County, we
24 eliminated releasing domestic violence arrestees on OR,
25 and so at arraignment, they were in custody routinely.

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1 And in those cases, the prosecutor had not yet talked to
2 the victim at the time of arraignment. In fact, the
3 prosecutor may have seen the police report an hour
4 before arraignment just to make the charging decisions.

5 And so a lot of the requirements that are laid
6 out here in the proposal, which are what should be
7 implemented, in reality can't be implemented before
8 arraignment. And that includes interviewing the victim,
9 checking the firearms registry information, checking the
10 protective order history, the criminal history. And all
11 of that information that really the court needs to know
12 about when they are making an informed decision on bail
13 and evaluating what threat or level of violence or risk
14 an individual may pose should they be released out to
15 the community and also evaluating what terms or
16 conditions that they may want to attach to bail should
17 they determine that they will set bail at a lower bail
18 amount than on the schedule.

19 And so there -- while the court may consider at
20 arraignment issuance of a criminal protective order, the
21 laws do state that the prosecutor is entitled to 2 days'
22 notice to prepare for those bail hearings. And because
23 of heavy court calendars, there's often pressure on the
24 prosecutors to waive that notice and go ahead, even
25 though that does contravene the other directive, which

1 is to contact the victim and find out what's going on
2 and what the dynamics are and more fully assess the
3 level of threat.

4 And so with respect to No. 5(a), I would
5 eliminate the words "typically at arraignment" and
6 suggest that the bail motion be heard within 35 days of
7 arraignment.

8 But I also want to emphasize that bail hearings
9 are not a one-time deal. We all know that at the end
10 of -- in a criminal context, at the end of a preliminary
11 hearing, the argument may be raised, if an offender has
12 been released from custody, sometimes a prosecutor will
13 come in with a motion to remand the individual back into
14 custody and have bail looked at again. And it's
15 important from an educational point of view for the
16 bench to be aware of the dynamics of not only domestic
17 violence but violence risk assessment, stalking and
18 obsessive behaviors and the ebbs and flows
19 and triggering incidents that may cause an individual to
20 escalate.

21 And having experienced homicide in Sacramento,
22 murder in Sacramento, of individuals by individuals out
23 on bail of victims while charges are pending, I can't
24 emphasize enough how important it is to pay attention to
25 conduct that is going on while a criminal case is

1 pending.

2 On that note, at page 31, No. 15, in
3 considering protection of the public factors, on the
4 fifth bullet point, it's indicated that one factor
5 should be alleged threats to the victim or to a witness
6 to the crime charged. And I would suggest that the
7 wording be "alleged threats posed," because we all know
8 that threats -- conduct may constitute a threat and
9 not -- and we are not looking merely at threats that are
10 verbally or explicitly made or -- made in writing in
11 explicit terms.

12 At page -- at Item 13 on the same page, the --
13 or excuse me, Item 12, prosecutor is to be notified by
14 the sheriff of when an individual is released from
15 another county on bail, that's something outside of your
16 control, but I wanted to add that in No. 13, the
17 prosecutor is to notify the victim that they're entitled
18 to attend a bail hearing on stalking.

19 The courts can ask the prosecutor, have you

20 notified the victim? Have you done your job? And that
21 is a question that could be asked in court.
22 And in turn, the prosecutors have a duty after
23 the hearing where the victim is not present to inform
24 the victim of what has transpired, so that the victim
25 isn't unexpectedly encountering their offender or

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1 perpetrator on the streets thinking that that person is
2 in custody. And we have seen those situations occur as
3 well.
4 At page 32, on No. 16, letter (g), I'm just --
5 as far as unintended consequences, when the court is
6 looking at the status of the other court orders in play,
7 that they carefully look at the terms of those orders
8 and work to avoid conflict with their orders, or, if
9 they do issue a new order that does conflict, that
10 that's a conscious decision, and it's a
11 well-thought-through decision that does not have
12 unintended consequences.
13 And then lastly I wanted to turn to some --
14 just a couple other issues. At page 35, under
15 "Evidentiary Issues," just to alert you, under No. 31
16 (a) and (b), that there is legislation pending to change
17 the definition of the victim advocates that are
18 protected by the victim advocate privilege. So by the
19 end of the year when you're finalizing your report, that
20 language may need to be adjusted if that legislation
21 goes through.
22 And then at the bottom of that same page, 37,
23 "Protocols for access to information," I would just add
24 in the situations where we have pro per defendants. And
25 I know in those situations where we don't want to give

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1 victim or witness contact information directly to an
2 offender charged with crimes against those people, we
3 have relied on the court appointing criminal
4 investigators. And the prosecutor provides the address
5 and contact information to the investigator and not
6 directly to the defendant who is not represented by
7 counsel. And I would suggest that as a form of helping
8 protect the victim and witnesses.
9 And then with -- in terms of sentencing issues,
10 page 38, with regard to probation, the court must
11 impose -- if probation is granted, at least 3 years'
12 formal or informal probation, I recommend that while a

13 batterer treatment program is pending and has not been
14 completed, that the probation be formal. And if
15 resources warrant, after it's completed, to reduce the
16 level of supervision to informal, that's something that
17 can be considered. But to impose informal probation at
18 the outset is not going to provide sufficient oversight
19 to ensure compliance with the terms of probation.
20 In addition, the -- there are big questions as
21 to the law itself. And again, that's outside your
22 direct scope here, but the mandates under 1203.097 that
23 do require the 1-year treatment program for all
24 offenders who fall within the offender victim
25 relationship as defined as you've laid out in page 38

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1 has been described as a cookie-cutter approach that
2 removes all discretion from the courts in imposing
3 tailored sentences, where in fact a 1-year treatment
4 program is not the most appropriate sanction.
5 And those kind of situations come up in
6 adult -- on adult relationships, on certain stalking
7 kinds of cases, on certain cases where the offender is
8 not a batterer as one commonly understands, but engaged
9 in violence on a particular situation that fell within
10 the victim/offender relationship but is not someone for
11 whom the batterer treatment program is designed to
12 treat.
13 And the court should have more discretion with
14 guidelines on addressing sentencing that will be most
15 effective in dealing with a particular criminal after.
16 And I would encourage the courts to orally
17 advise the offenders at sentencing of what the terms
18 are. I have witnessed courts issue sentences by
19 numbered paragraphs like we're doing here today, but
20 without actually explaining what those are. Conditions
21 4, 5, 10 and 11 are ordered.
22 Well, that's going right over the head of the
23 offender. And while someone may sit down with them and
24 explain those to them, someone may not. And it's
25 important for the offenders to know what the terms are.

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1 And also, that hopefully will help them prevent them
2 from getting into trouble again if they have a better
3 understanding of what their parameters are under the
4 terms of the court's orders.
5 And finally, while the proposals deal with some

6 of the mandated terms of probation that are required, I
7 would also encourage some suggested options that the
8 courts might consider in particular cases that may be
9 applicable when the facts warrant it, such as parenting
10 classes, if children witness domestic violence, and
11 clearly search and seizure is an absolutely essential
12 tool to enforcing your orders.

13 Again, the orders that you issue we may get
14 information of wrongful -- the justice system may get
15 information that the terms are being violated, but not
16 to the level where a new crime has been committed, and
17 not to the level where a search warrant can be secured,
18 but certainly at a level where exercise of a probation
19 officer of search and seizure conditions could reveal
20 firearms, weapons, alcohol or drugs in the home that are
21 in contravention of a court's orders.

22 And I also wanted to alert you of pending
23 legislation that's relevant to Item No. 59 at page 40
24 that would deal with the 10-year protective orders that
25 can be issued under stalking and also intimidation of

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1 witness provisions 636.9 and 636.2. And that
2 legislation would deal with the current issue where
3 protective orders are often due to terminate at the end
4 of probation, and this would allow the order to last up
5 to 10 years regardless of whether the individual
6 restrained is at the state prison, county jail, put on
7 probation or not on probation or put on parole or not on
8 parole.

9 So I wanted to bring those -- that information
10 to your attention as well.

11 Thank you very much.

12 JUDGE KAY: Thank you, Ms. Killeen.

13 Are there any questions for Ms. Killeen?

14 JUDGE BORACK: Do you have the bill number for
15 the legislation you just referred to?

16 MS. KILLEEN: I do. I can email it to Bobbie
17 Welling.

18 JUDGE KAY: Thank you. Mr. Kilmer?

19 --o0o--

20 COMMENTS BY MR. DONALD KILMER

21 MR. KILMER: Thank you. I suppose I'm indebted
22 to Julie Saffren, who spoke earlier, and Judge Mary Ann
23 Grilli for drawing me into this project. Both of them
24 found out about my somewhat unusual practice in San
25 Jose. About 70 percent of my practice is devoted to

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1 family law work, and the other 30 percent of my work is,
2 I represent gun manufacturers, gun dealers, gun show
3 promoters, movie prop companies, in helping to make sure
4 that they comply with federal, state and local laws with
5 regard to firearms.

6 So on the one hand, I get to see, somewhat
7 tragically oftentimes, the effects of domestic violence
8 on families in my family law practice. And then since
9 I'm naturally professionally and personally sympathetic
10 to people in the gun culture, I've had to reconcile
11 these issues within myself, and it gives me somewhat of
12 a unique perspective.

13 Of course, what I want to address my remarks to
14 today, though, are some of the problem areas I see with
15 regard to firearm relinquishment orders during the
16 period of service to the hearing. Of course, once
17 there's been an adjudication, either in a criminal or
18 civil context, that there is domestic violence that has
19 occurred and a restraining order issued, the law is very
20 clear, the batterer can no longer possess guns.

21 But part of the problem that I see here,
22 though, is that we still have to take this balancing
23 approach between the rights of the gun owners and the --
24 our duty to protect the victims in these -- in domestic
25 violence cases.

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1 So what I want to address mostly today is this
2 idea of protection and perception. Of course, the goal
3 of the firearm relinquishment is the protection of the
4 alleged victim. To the extent that the draft
5 guidelines, for instance, point out that firearm
6 relinquishment is primarily a self-executing provision,
7 we're relying mostly on -- unless law enforcement is
8 there to serve a restraining order and they take the
9 guns with them, we're relying on the gun owner to
10 voluntarily relinquish their guns and turn in a form
11 that says, I've given up my guns, now I want my hearing,
12 and if the judge doesn't find restraining orders, of
13 course, I want my guns back.

14 But the problem that we have, and this is
15 something that I get from my clients all the time, is
16 there's this perception that the process itself is
17 unfair to the gunman. And I've provided the panel with
18 a memorandum addressed to Justice Kay and this panel
19 that outlines in detail some of these problems.

20 But just to hit the high points, for instance,
21 when a temporary restraining order is issued, the
22 provision for relinquishment of guns basically says, 24
23 hours, turn in your guns to law enforcements or a
24 firearms dealer for sale.

1 gather your belongings, take only what you need till the
2 next hearing, get out of the house and stay away from
3 the house and the people in it.
4 Your -- what happens is, you're setting up
5 conflicting orders. And the honest or average
6 law-abiding gun owner wants to comply with these orders
7 but doesn't know how to do so.
8 Also, we have this reality check problem of, as
9 one of the earlier speakers pointed out, the most
10 dangerous time period is right when that order is being
11 served. Do we really want to be telling people who own
12 guns and ammunition to go to their gun cabinet, pick up
13 their guns the moment they've been served with an order?
14 We're kind of planting a subliminal message that's not
15 really a good idea.
16 The proposal would be, since you're already
17 issuing orders that the person cannot be in possession
18 of guns, that they -- it be clear on the Judicial
19 Council form that they are to leave the premises, taking
20 only what they need till the next hearing, and then
21 impose some kind of a constructive trust on the firearms
22 to the protected party. That's the person who has the
23 interest in making sure that those guns don't go
24 anywhere. Now, if the person is ordered to leave the
25 house and ordered not to possess guns, we've taken care

1 of that person not having access to guns.
2 Then when we get to the hearing, a judge can
3 make an appropriate order for sale or disposition. But
4 having the gun owner themselves go to their safe, get
5 their guns during that highly emotional period, is just
6 not a good idea, just from a practical speculative.
7 Of course that's all obviated if the
8 restraining order is served by a police officer who's
9 present and can take possession of the guns, but I don't
10 know that we have the resources to do that at this
11 particular point in time.
12 Whether we like it or not, we live in a gun
13 culture. 73 percent of the people in this country think
14 they have a right to keep and bear arms, and they don't
15 care when the courts say. This is a 2002 ABC News pole.
16 I happen to agree, whether you like it or not,
17 with the NRA's position on gun ownership. Even in this

18 state in 1982 when a ballot initiative was proposed to
19 put a moratorium on the sale of handguns, it was
20 defeated at the polls by a 2-to-1 margin. People have
21 guns; they're ubiquitous in our society. We need to
22 find a way to get them out of the hands of people who
23 are accused of battery or convicted of battery to make
24 sure they can't hurt people. But, they're everywhere,
25 and we have to deal with that.

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1 But along with the fact that the guns exist is,
2 there's an ideology. And this is where we get into the
3 perception problem.
4 Most of these people believe that you're
5 stripping them of a civil right, no less important than
6 the right to speak, the right to publish, the right to
7 worship, without a hearing. Of course I'm talking about
8 the temporary orders now.
9 And that's why -- that's where you're getting
10 that anecdotal reluctance to comply. Because they look
11 at it and they say, look, I can't even comply with the
12 order. I've got 24 hours to turn in my guns. If I get
13 served on a Saturday night then there's no gun store
14 open on Monday, I'm already in violation of the order
15 Monday morning. Why should I comply?
16 This is not hyperbole on my part. This is what
17 I hear from clients.
18 The other problem we have is, the current law
19 requires the guns to be either sold through a firearms
20 dealer or turned into law enforcement. The problem --
21 there should be a third alternative, and the third
22 alternative ought to be this constructive trust idea
23 where the guns are held by the protected party, or that
24 a transfer can take place to a trusted family member.
25 Now, I had a case come into my office recently

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1 where it didn't have anything to do with domestic
2 violence. It was a widow, she comes in and she says,
3 look, I have grandpa's old shotgun here, I don't know
4 what to do with it.
5 I said, well, you should probably sell it. And
6 she says, well, I don't know what it's worth, and I
7 don't know, you know, who to take it to. So I had her
8 bring it into my office.
9 She brought in an old Holland & Holland
10 shotgun. These are handmade in England, and it was made

11 before World War II. The shotgun was worth anywhere
12 between 60- and 100,000 dollars. And some of these
13 firearms collections we're dealing with are worth tens
14 of thousands of dollars as well, so we're talking about
15 substantial property here.

16 The problem we get into is that these guns are
17 turned over to a law enforcement agency, and they're put
18 into an evidence cabinet, and they're not cared for
19 properly. Who bears the burden or the risk of the
20 degradation of that property? Which in some cases is
21 community property, and the victim is entitled to half
22 the value of that as well.

23 So we still have this problem of, how do we
24 preserve this asset that has to be separated from the
25 alleged batterer, and at the same time, preserve the

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1 rights?

2 Getting the guns to a trusted family member who
3 may have to either be joined in the proceeding or
4 brought in and explained to them that you cannot give
5 these guns back to the batterer until the case is over
6 and we get an order for a return of the property would
7 be a better alternative, and I think -- or at least a
8 third alternative to selling the guns to a dealer or
9 relinquishing them to law enforcement.

10 Then there's this issue of immunity. It was
11 addressed by some of the earlier speakers. Immunity
12 just doesn't go to the issue of whether or not I have a
13 gun, I'm subject to a restraining order, did I turn it
14 in or not.

15 The problem we have, and it's highlighted in
16 the case of United States versus Hanes, which is also
17 cited in the recent case of People versus Sun, and
18 that's this: Somebody who is required to make a
19 judicial admission that they committed a crime has their
20 Fifth Amendment right already violated.

21 And the way this happens is, if somebody's in
22 possession of an unregistered assault weapon, an
23 illegally bought handgun, a machine gun or any other
24 number of devices that qualify as firearms, and they
25 have to fill out a form to turn in the gun or relinquish

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1 it to law enforcement, they're admitting a crime. And
2 the problem that we're doing is, we're setting up a
3 forced error situation where a District Attorney may not

4 have the tools to properly prosecute somebody who
5 actually is in possession of a crime gun.
6 My nightmare scenario is somebody who is in
7 possession of a gun that was used to commit a crime, a
8 murder, say. They turn it in under a domestic violence
9 restraining order, and then the smart defense lawyer
10 says, this has to be suppressed, because my client was
11 forced to confess the possession of this gun. We don't
12 want that to happen.
13 The remedy is in the Family Code, where we talk
14 about immunity. The problem is, immunity cannot be
15 judicially granted. It's a prosecutorial function. So
16 in order for us to fix this, we have to come up with
17 some mechanism for use immunity for these status crimes.
18 For the status crime of owning an unregistered assault
19 weapon or owning an illegally transferred gun.
20 This way the person is told, look, you have a
21 one-shot deal. You turn in this gun under this blanket
22 of immunity. You can't be prosecuted for the mere
23 possession an illegal or contraband gun. But you can be
24 prosecuted, obviously, for possession of a crime gun.
25 I don't know how to solve the problem, because

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1 it would require cooperation between both the District
2 Attorney's office and the judicial branches in order to
3 promulgate an effective immunity.
4 Specifically addressing some of the guideline
5 issues, this Fifth Amendment issue is not going to go
6 away. Somebody's going to figure out how to use this
7 use immunity issue to their client's advantage at some
8 point in time. We should address it in the initial
9 orders.
10 This idea of unregistered guns. It's an
11 interesting discussion I get into with clients and
12 colleagues all the time.
13 The only guns that are required to be
14 registered in the State of California are assault
15 weapons, machine guns and other destructive devices, and
16 handguns imported into the state after 1996. Otherwise,
17 there's no such thing as a registered gun in this state.
18 Now, it's actually somewhat of a legal fiction,
19 because there is a database that the Department of
20 Justice keeps, and they don't call it a list of
21 registered guns, but it is a de facto list of registered
22 guns. But this does not have on its list long guns,
23 which are shotguns, and rifles.
24 I mentioned earlier the new case law, People
25 versus Sun. In your guidelines, you talk about

1 accessing federal databases. The reason that result in
 2 People versus Sun came about was, the law enforcement
 3 officers accessed a federal database, which is actually
 4 a tax record, in order to supply the probable cause for
 5 a search warrant. It was suppressed at the trial court
 6 and upheld on appeal.

7 We don't have that problem if the California
 8 database is used, because the California database is
 9 kept not for tax purposes, but for public safety
 10 reasons, and of course that list can be used to find out
 11 if somebody's in possession of a gun who shouldn't have
 12 one.

13 A couple other things. One of my colleagues
 14 here mentioned that 12020.5 already provides a mechanism
 15 for law enforcement to take or search for guns at the
 16 scene of domestic violence. But there are Fourth
 17 Amendment issues there that also have to be addressed.

18 Ammunition. Our Judicial Council forms
 19 ironically specifically say, don't take your ammunition
 20 with you when you turn your gun into law enforcement.
 21 Unfortunately, that's kind of a misstatement to the
 22 restrained party, because the restrained party can't be
 23 in possession of ammunition either.

24 Penal Code Section I think 12 -- it's the --
 25 the citation is in the paper I gave you. If you're

1 subject to an order prohibiting you from possessing a
 2 firearm, you're also prohibited from having ammunition.
 3 So that issue needs to be addressed.

4 And I see that my time is up, and I'm happy to
 5 answer any questions the panel has.

6 JUDGE KAY: Thank you very much. Any questions
 7 for Mr. Kilmer? I'm sorry?

8 JUDGE MacLAUGHLIN: I said, I have about a
 9 hundred, but I was kidding.

10 MR. KILMER: I think my email is on the form I
 11 gave you. I'm happy to answer any questions anybody has
 12 off line. Thank you.

13 JUDGE KAY: Thank you. I think we'll -- thanks
 14 to all of you who spoke in the session. Very
 15 interesting remarks.

16 I think we'll have a 5-minute recess now. We
 17 are running way behind. And then when we meet again in
 18 5 minutes, we'll have the last segment on criminal DV,
 19 followed immediately by the public hearing and the
 20 public testimony, members of the public. Thank you.

21 (Recess from 2:09 p.m. to 2:18 p.m.)

22 JUDGE KAY: All right. We're going to have to

23 try to move along here. I'm afraid we're running about
24 45 minutes late, and there are those of us who have
25 planes to catch to other parts of the state. So if

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1 anybody has to get up and leave in the middle of
2 somebody's testimony, on their behalf I apologize.
3 The fourth component of the hearing today is
4 entitled "Improving Practice in Criminal Domestic
5 Violence Cases." This aspect of our hearing concerns a
6 series of recommended practices which mirrors the
7 chronology of a criminal domestic violence case from
8 arraignment to disposition and, when applicable,
9 post-conviction matters.

10 Some of the practices are already mandated;
11 others are advisory.

12 One of the concerns of the Attorney General's
13 Task Force was deviation from the mandatory terms and
14 conditions of probation set forth in Penal Code Section
15 1203.097. Today we will hear from judges, probation
16 officers, prosecutors and defense counsel as well as a
17 batterer intervention provider about how the statute is
18 working and the resources necessary to make needed
19 improvements in these cases while preserving defendants'
20 rights.

21 Will the following speakers please come up to
22 the front of the auditorium while I introduce you.

23 The Honorable Philip H. Pennypacker.
24 Judge Pennypacker serves as the supervising judge of the
25 Criminal Domestic Violence Court of the Santa Clara

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1 Superior Court. He has served as faculty for the BE
2 Witkin Judges' College and is a frequent presenter of
3 judicial education programs on domestic violence.

4 Mr. Arturo Faro. Mr. Faro is the Division
5 Director, Specialized Services Division for the San
6 Francisco Adult Probation Department. He has had
7 oversight for probation services relating to domestic
8 violence in the past 6 years.

9 Ms. Niki Solis. Ms. Solis is the Managing
10 Attorney of the Domestic Violence and Misdemeanor Unit
11 of the San Francisco Public Defender's Office. She's
12 been a Public Defender for over 10 years and has tried
13 dozens of DV cases.

14 Mr. Frank Del Fiugo. Mr. Del Fiugo operates A
15 Turning Point Counseling and Educational Services, a

16 batterer intervention program provider in Los Gatos. He
17 co-chairs the Batterers' Intervention Committee and also
18 sits on the Santa Clara County Domestic Violence
19 Council.

20 Mr. James Rowland. Mr. Rowland is the managing
21 Attorney of the Domestic Violence Unit for the San
22 Francisco District Attorney's office and has extensive
23 experience prosecuting domestic violence cases.

24 Finally, Ms. Mary Carolyn -- the Honorable Mary
25 Carolyn Morgan. Judge Morgan serves as a criminal

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1 domestic violence judge for the San Francisco Superior
2 Court. Judge Morgan helped to develop the first
3 judicial education program, which I remember, on
4 criminal domestic violence in 1989 and has served as
5 faculty for numerous education programs thereafter. She
6 is Past Dean of the California Judicial College. And I
7 should mention that I am a big fan of Judge Morgan and
8 have been since we were both appointed on the same day
9 to the bench almost 26 years ago.

10 All right. Judge Pennypacker?

11 --o0o--

12 COMMENTS BY JUDGE PHILIP H. PENNYPACKER

13 JUDGE PENNYPACKER: It's an honor to have been
14 asked here to present, and I want to just indicate to
15 you that I was asked to list some factors, five factors
16 that go into what I would perceive to be is a very
17 successful domestic violence court, and that was the
18 assignment a Ms. Welling gave me, Justice Kay, and I'm
19 going to try to stick to that.

20 What I did want to do is to take a very small
21 detour from those factors just for a second to very
22 briefly highlight a factor that you had this morning.
23 And that's court leadership.

24 And I know you've had presentations about that,
25 but I think to the extent that I feel very satisfied

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1 with the program that we have in Santa Clara County,
2 most of it is owed to past presiding judges, current
3 presiding judges, judges who have preceded me and the
4 dedicated Domestic Violence Court of our county who have
5 put in tireless hours and well-thought procedures that
6 go into the entire process that we have in our county.
7 And I'm very satisfied with it.

8 But I think that the one thing that has

9 highlighted our overall leadership, if we have any
10 statewide, is the fact that we are never satisfied. We
11 have had, and two of your -- two of our -- two of my
12 colleagues are sitting here on your Task Force -- I
13 think kind of are emblematic to what that lack of
14 satisfaction breeds. Because it breeds creativity, it
15 breeds a desire to ensure maximum protection of victims
16 coming before the court. Judge Grilli has seen where
17 there are gaps in the civil area and has now established
18 a committee called Fill in the Gaps, that we are looking
19 at certain areas, constantly revising it with our
20 partners in the justice system. We meet regularly with
21 them, and this program looks towards plugging some of
22 the holes that are procedurally there.

23 Judge Chatman, not content as she supervised
24 the criminal domestic violence calendar before myself
25 for almost 5 years, saw that there were mental health

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1 problems, people that were clearly diagnosed with mental
2 health deficits that were not going to make it on
3 probation and had to have that little extra help and
4 structure.

5 And that calendar has done wonders, I believe,
6 in assisting our society to become safer, and for our
7 county, hopefully, to build peaceful families. And I
8 think those are very important leadership qualities that
9 the court has.

10 And we are also very blessed, I believe, by
11 having a court executives office which supports us in
12 these endeavors and has assisted us in doing what we
13 need to do to gain impartiality at the same time making
14 sure that there is accountability and safety for those
15 people coming into our courts.

16 So with that, I would turn very briefly to the
17 five -- and I realize you are running late, and I will
18 try to speed things up -- five factors that I have
19 looked at.

20 Your report, by the way, is excellent. The
21 recommendations in the criminal area I believe are
22 absolutely required in this state to make sure that the
23 full -- full impact of this area of law is implemented.
24 And I applaud what you've done, and I am looking forward
25 to further educational endeavors to the rest of the

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1 bench and working with you to accomplish that.

2 The first factor that I would sort out is also
3 one of the first factors you have looked at in your
4 report, and that is, knowledgeable pretrial screenings.
5 Our court is very lucky, I believe, in having
6 the office of pretrial services provide to us as bench
7 officers very detailed reports. Obviously, most of our
8 business is in the misdemeanor area. Every day I do an
9 in-custody misdemeanor arraignment calendar, and on the
10 new cases coming in, I have detailed reports where a
11 clear sweeping of all of the required -- the Family
12 Code-required areas is done and is given to me as a
13 judge.
14 And it is extremely useful, obviously, in
15 setting bail; it's extremely useful in trying to fashion
16 a very good protective order; and it's also very helpful
17 in trying to assess the prospects for early disposition
18 of a case.
19 And our arraignment speech does have all of the
20 requirements of 1203.097, so that people when they first
21 come into the court, they are exposed to them, they know
22 what they're getting into, they're advised of it, and we
23 talk through them with it in terms of reading all of
24 those conditions if they decide to plead at the
25 arraignment stage.

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1 Secondly, I think that it's important to have
2 consistency in dispositions. By that I mean that the
3 defendants coming into our courts can be either told by
4 counsel or pick up through the grapevine, which is very
5 predominant in criminal courts, what they can expect if
6 they enter a plea on this type of a case.
7 And there's a predictability level that is
8 extremely useful to have to the defendants, and I think
9 that our entire misdemeanor calendar -- and we do handle
10 felonies as well -- but the misdemeanor calendar is
11 geared towards getting people through the 52-week
12 program.
13 That is our primary emphasis, because I believe
14 that our programs in our county, and you'll hear from
15 one of the representatives in our county, we have
16 exceptional programs that make the batterer accountable.
17 They inform us it, they communicate regularly with us,
18 and the behavior modification that goes on with those
19 programs in my estimation is what has been a small part
20 in the decline in domestic violence deaths throughout
21 this particular state.
22 We also tend to go a little bit lower on our
23 sentencing for two reasons. First of all, we want to
24 see people in the programs. We want to see them
25 complete them, we want to get them in as quickly as

1 possible. I think it has a more of a positive aspect
2 and a sign of success if we're able to do that more
3 immediately than waiting around.

4 Secondly, and this goes to the last comment I'm
5 going to have in a minute, which is that if there is a
6 failure on the probationary term, there is a substantial
7 amount of time left in reserve to use for accountability
8 and for swift, sure violation-of-probation sentencing.

9 Thirdly, we also have tried to do more of an
10 effort that I think is very much needed, and that is
11 coordination with family court. I supervise two other
12 judges. We are a small unit of the criminal court. We
13 are in a distinct facility from the family court, and we
14 try now to do more communication with our family court.

15 I think it's absolutely essential to have
16 congruent orders; that we cannot be putting people in a
17 situation where one court is saying, peaceful contact,
18 and the other one is saying no contact.

19 Those days, as far as I'm concerned, hopefully
20 are over. We have now an ability to get family court
21 orders into our files as quickly as possible. We have a
22 case manager that was allotted to us in domestic
23 violence criminal this year who is getting those very
24 important orders. And also, we have the unified family
25 court in our county, which allows for the merging of

1 both the family court case and the domestic violence
2 criminal case to hopefully keep the orders congruent,
3 resolve the cases in a more expeditious and fair
4 fashion.

5 Fourth, we have reviews by the judges on
6 written reports from batterer intervention programs, and
7 it's supported by the probation department.

8 We have misdemeanor probation officers in
9 domestic violence, which I think is probably outside the
10 norm. I think it's essential. We are communicating
11 electronically with probation officers. They'll see
12 when reviews are coming up and are able to get stuff to
13 me and to the other judges in our court about how people
14 are performing on probation. Because we always just
15 hear the one side, the defendant coming in, and that's
16 just not going to be a good litmus test.

17 The batterer intervention programs provide
18 extremely valuable narratives and give us a backlog of
19 experience with this individual.

20 Finally, we do sentence on violations of
21 probation which mean something. If people are going to
22 ignore the programming, if they ignore the benefit of
23 going through the 52-week program, they are dealt with
24 in a very harsh fashion -- I shouldn't say harsh. I
25 would say just fashion, in our court. And I say that

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1 because we normally go anywhere from 6 months to a year
2 on the misdemeanor violation-of-probation calendar if
3 people do not want to go through this program.

4 We feel it's essential to build safe families.
5 And I believe that the progress that our county has
6 shown is something that we are not going to be content
7 with, but we're always looking for ways to do things
8 better.

9 So my time is up. And if there are any
10 questions, I'd be glad to answer questions.

11 JUDGE KAY: Thank you, Judge Pennypacker. Any
12 questions?

13 Thanks again.

14 JUDGE PENNYPACKER: Thank you very much.

15 JUDGE KAY: Next we will hear from Mr. Arturo
16 Faro.

17 --o0o--

18 COMMENTS BY MR. ARTURO FARO.

19 MR. FARO: Good afternoon, honorable members of
20 the panel. I am very thankful and grateful for being
21 invited to this hearing today, primarily because it's an
22 opportunity for San Francisco to finally show something
23 that works.

24 I've been with the probation department now
25 since 1989, and one of the crowning processes that I

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1 believe we've been engaged in is the domestic violence
2 unit that our department currently facilitates.

3 We're a unit that has 13 officers, 12 of whom
4 do actual supervision. One is a court officer. I have
5 two supervisors in that unit. And we fully fund that
6 unit through our general fund monies that we get as a
7 department. We don't get grants for this unit, we don't
8 have any kind of other specialized processes to get
9 monies to support this function. It is funded purely by
10 the department's general fund.

11 So with that amount of people, we've had to go
12 through a lot of growing issues over the last 5, 6

13 years, in division directors in this department.
14 As you all know, we're currently under the
15 oversight of a justice-encouraged oversight panel which
16 stemmed out of a domestic violence situation which is
17 very tragic here in the City and County of San
18 Francisco, a domestic violence murder. And out of that,
19 the department was given 17 recommendations to look at
20 in terms of how we would improve our probation services
21 to the domestic violence community in San Francisco.
22 We had to work through a lot of processes to
23 look at so that we would develop protocols and practices
24 that were meaningful which, in the opinion of the report
25 that was fashioned out of this tragic murder, caused the

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1 death of this particular person.
2 One of them is that we now -- this unit is
3 fully dedicated to supervising both adult -- both felony
4 and misdemeanor domestic violence cases. We're one of
5 the few departments, and the state has kept it intact.
6 I recently went to a probation administrators' meeting,
7 and I was sad to hear that a lot of misdemeanor domestic
8 violence cases are not being supervised or put in some
9 kind of administrative bank.
10 JUDGE KAY: Do you know what kind of case log
11 each of the 12 probation officers has?
12 MR. FARO: Right now we're covering case loads
13 of about 1 to 80. So the case load ratio right now is 1
14 to 80. Our total count of probationers that we have in
15 this unit is 916.
16 JUDGE KAY: Thank you.
17 MR. FARO: And that was a far cry from what we
18 originally had when we started this process many, many
19 years ago.
20 In 2005, we had 1300 cases. 2006, we dropped
21 down to about 1100 cases. And in 2007, we're down to
22 about 916 cases. That's not just because, you know,
23 there's a lack of domestic violence incidents that are
24 occurring in San Francisco. What we're finding is that
25 now with all these equal partners that we're working

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1 with -- the District Attorney's office, domestic
2 violence court, which I'm not going to steal
3 Judge Morgan's thunder about, because I think that's one
4 of the best practices that we've been engaged in as a
5 probation system -- all of that in collaboration with

6 each other has kind of helped manage the case loads that
7 have gone from this astronomical number when I first
8 worked in the division to now somewhat a manageable
9 number.

10 And as a result of that, we are now able to
11 look at doing things like field supervision where we're
12 engaging not just the offender out in the community, but
13 we also want to reach out to the victims out there and
14 make sure that they're still safe and sound.

15 It also allows our officers to do much more
16 other practices, which they've traditionally been not
17 burdened with because of the high case loads they've
18 had, such as doing site visits. We're now looking at
19 officers going out to the different batterers' programs
20 to do actual nighttime site visits and supervise those
21 programs in a manner which is more fitting than what it
22 was before when we had one supervising probation officer
23 monitoring 11 batterers' programs.

24 As you could tell, you know, with 11 programs,
25 27 classes that occur in a week's time, it's really not

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1 feasible or possible for that officers to get out to all
2 the different classes and actually observe what's going
3 on in there.

4 So we're moving to -- because of the smaller
5 case load counts we have now, moving towards trying to
6 get officers to do a lot of that work.

7 Another significant issue that we've undergone
8 as a best practice, which we found to be really
9 significant now, is that all domestic violence offenders
10 have to go through an orientation program. It's held
11 every Thursday. Every Thursday of the month. And
12 offenders that go through this process oftentimes leave
13 there with an impression that they know a lot more about
14 what's expected of them than what they've got through
15 the court processes that they were previously engaged
16 in.

17 This orientation is scheduled for each offender
18 within the 2- to 3-week period, and there's a report
19 back to the court whether or not this offender has made
20 it to the orientation or not.

21 We recently took a slice of that population and
22 took a look at the offender profiles in itself. Of the
23 1143 people that were referred to this process, 776
24 appeared. Of the 776, only 169 of them were employed.
25 So that kind of tells you something in itself. I mean,

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1 if only 169 of them are employed, if you're talking
2 about fees for programs or even some other significant
3 issues they need to pay for, like child support or
4 support for their former families, then, you know, there
5 are some of those issues that are occurring with these
6 offenders.

7 Another significant part is that only 240 of
8 them, this is their first time on paperwork, meaning
9 their first time on some kind of probation or whatever.
10 So there's a large significant population of them that
11 have been through the system before.

12 What we've also seen with this group is that
13 now, in San Francisco, at least, even offenders, felony
14 offenders that are on probation for non-DV offenses, IF
15 they pick up a DV offense, they're referred to domestic
16 violence court for supervision, and they're referred to
17 our unit for supervision.

18 And that's significant in the sense that, you
19 know, they're mandated also in the 52-week program.
20 They're getting a higher level of supervision, per se,
21 and a higher level of oversight from the courts, which
22 builds in a level of safety for people out in the
23 community. So it is a practice that, you know, we're
24 seeing more and more as a really good practice in San
25 Francisco.

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1 It will of course bring up calendars initially.
2 But when you put people through this process, then
3 things get -- they get their treatment programs, and
4 they get some level of higher supervision which
5 hopefully may avert some of these horrific domestic
6 violence incidents that we've suffered in this
7 community.

8 But one of the things that's really much more
9 significant with us is that it's truly developed in
10 collaboration. I know now my partners in the system.
11 Public Defenders are there, you know, the courts are
12 there. We also see the District Attorneys there. The
13 sheriff is also involved in this process. Sheriff's
14 victim's unit is involved with this process. Victim
15 services. Various community agencies are involved with
16 this, including SafeStart, Greenbook -- you name it,
17 anybody that deals with domestic violence issues in San
18 Francisco are now a partner in dealing with these issues
19 in the community.

20 And I found that to be really a good,
21 significant part of how we've developed the system to
22 where it is now.

23 6 years ago, if looked really bad in the sense
24 that the reports said, all of these systems are not

25 talking with each other, the police department doesn't

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1 get police reports to the probation department in a
2 timely way. Well now, because of these collaborative
3 efforts, we now have a direct line of contact with the
4 Domestic Violence Unit of the San Francisco Police
5 Department, which translates back into our connection,
6 back into the domestic violence court.
7 So we've built something here really
8 meaningful, we've built something here really
9 sustainable, and we've built something here that I think
10 is a good process. But that's not to say there's still
11 not work that needs to be done.
12 One of the issues that really plague our system
13 here is this whole issue of oversight of the batterers'
14 programs. One officer -- or one supervisor doing this
15 is just not enough. I think what we need to really look
16 at is a much more partnership and collaborative outlook
17 with the community, with some research experts out
18 there, probation, the District Attorney's office,
19 everybody, the Public Defender, everybody that's
20 involved in this process, so they could also help and
21 share in giving some oversight over the programs that
22 people feel may or may not work.
23 There's still not a lot of data out there that
24 has shown whether this model is better than that, or
25 whether or not this program is better than that, or

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1 whether or not that collaborative unified treatment
2 process that a lot of models are going to where it's a
3 one-stop shop and the offender is going to, has some
4 kind of meaningful work that's being done or not.
5 And I think that's where we're looking in terms
6 of really getting a handle on knowing whether or not
7 these processes work.
8 But I do know that the collaboration is key.
9 And without that, without that kind of oversight, then
10 what we end up happening is, we have everybody working
11 at their own individual silos and offenders falling
12 through the cracks and victims' safety being
13 jeopardized.
14 Again, I'm very appreciative of the time that
15 this panel has taken to come to San Francisco. And I'm
16 willing to answer any questions at this point that you
17 may have of the probation system. Thank you.

18 JUDGE KAY: Thank you, Mr. Faro. Questions?
19 Okay, thanks again.
20 MR. FARO: Thank you. Now move on to Ms. Niki
21 Solis.
22 --o0o--
23 COMMENTS BY MS. NIKI SOLIS
24 MS. SOLIS: Thank you, Justice Kay, for having
25 me here.

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1 I did have a presentation prepared, and I had
2 lunch with my 9-month-old and I left my final draft with
3 him. So somewhere in baby land it's being drooled upon.
4 But I'll work from my draft.
5 I think it goes without saying that domestic
6 violence is a problem. It's a problem in every
7 community. I think we can all say that we have been
8 touched by the negative aspects of domestic violence,
9 whether it's in the context of a friend or, in my
10 situation, when I was 11, I witnessed my sister being
11 abused by her then partner who was the father of her
12 child.
13 So I think that we all know that this is
14 something that needs to be addressed. I also do believe
15 that it's -- judges on various courts, you understand
16 that we need to have balance in order to ensure that
17 there's integrity in the system.
18 In looking at the guidelines, I was impressed
19 with some of the provisions that are in there. I think,
20 though, that we have to temper our vigilance with regard
21 to domestic violence with that in mind; that we need to
22 have balance, and we need to make sure that there is
23 integrity in the system.
24 I look at page 13, the Section 22, California
25 Law Enforcement Telecommunications System, the CLETS,

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1 where it's provided that the Task Force recommends that
2 all restraining orders be transmitted or entered into
3 the statewide database within one business day. That
4 makes complete and absolute sense.
5 There's also the flip side of that, when a
6 defendant's restraining order is removed. Who ensures
7 that that is removed out of the system? It has been a
8 problem in a lot of cases. I personally have
9 represented clients who have been arrested for
10 violations of stay-away orders that no longer existed.

11 And I think that, again, if we look towards the
12 balance, we can find many instances in your
13 recommendations where we can ensure that the defendants,
14 the accused, are equally protected to the extent that
15 the constitution mandates.

16 In cases where defendants get the orders
17 removed and they are rearrested, it just will reopen
18 that wound of domestic violence. And I think that we
19 have to be mindful of that. And so I ask that the Task
20 Force add in there that if there's a removal, that that
21 is to be transmitted in the system as well within 1
22 business day.

23 In our domestic violence court in San
24 Francisco, we have a paralegal, which I think is very,
25 very helpful, with regard to continuity of

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1 representation. In other words, that paralegal is
2 usually there. We had a paralegal there I believe for
3 over 2 years who knew of the situations of the various
4 defendants. So even though they may have had different
5 lawyers, the paralegal knew when the defendants came up
6 what issues were present.

7 So I think that, you know, it's something that
8 for other jurisdictions you might want to look at in
9 order to have that continuity.

10 Mr. -- I think Mr. Faro had mentioned the need
11 for oversight of the batterers' program. We also would
12 ask the Task Force to look into that, because the
13 batterers' programs, they do have a unique perspective.
14 They deal with the accused, with defendants every day,
15 or every meeting, and more so obviously than the court
16 or even probation.

17 And so we have to make sure that if needs
18 aren't being met of the clients, that those are being
19 addressed. And what I'm referring to is essentially
20 when clients can't afford to pay fees in the past -- and
21 I know with the judge who's in the court now, she's very
22 mindful of this -- but in the past, we had situations
23 where defendants couldn't pay, and therefore they were
24 getting negative reports, or they weren't getting very
25 accurate reports as to participation in the programs

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1 simply because they couldn't afford to finish paying the
2 fee.

3 So they had finished their program, but the

4 program would not recommend, obviously, that they be
5 successfully terminated from the program because they
6 hadn't been able to pay.
7 So also, I think we should have that in mind,
8 whether or not a client can afford to pay and whether or
9 not the batterers' programs are giving that information
10 to the courts so the court can make that proper
11 determination.
12 I would like to address a couple more specific
13 issues with regard to the recommendations of the Task
14 Force.
15 You know, with regard to scheduling hearings on
16 page 15, obviously we don't -- when we talk about
17 stay-away orders, we do want it to happen expeditiously.
18 But sometimes people can't -- they don't have an
19 attorney or they've been notified or given notice of
20 this hearing, and just to have them be able to get an
21 attorney at the hearing I think would be important.
22 Again, it would ensure the integrity of the system.
23 You don't know how many -- I mean, it's all
24 about the cycle of violence and the power of wielding
25 control. I'm sure you've all heard of those terms. And

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1 sometimes when a victim is seeing her husband or partner
2 victimized by the system, at least that's what she may
3 perceive, then she will run to his aid or want to
4 protect. Again, it's all on that power of wielding
5 control. And that is to say that a victim -- oftentimes
6 we get victims who call us and say they want to back out
7 of the procedures for reasons that may seem illogical to
8 us, but logical to them. They feel that, well, I don't
9 want my husband in jail. I want him to go to a program.
10 Or I don't want a stay-away order. I want to be able to
11 go to counseling.
12 And I think that we should keep those issues in
13 mind as well, that sometimes victims want to back out of
14 the procedure because they feel like there is no
15 balance. And if they feel that if their partner isn't
16 being treated fairly, they're going to run to their aid.
17 And it sounds bizarre, but I think that's sort
18 of what happens in these situations. And I think joint
19 counseling is also something that -- I know the court
20 can't mandate that a victim go to counseling, but a
21 recommendation of a victim going to counseling along
22 with or separate from the perpetrator, defendant, the
23 accused, would be something that I would -- as a Task
24 Force, I would want you to look into.
25 As far as statistics, on page 16, I would be

1 interested to see if the Task Force would recommend that
 2 in the gathering of statistics, that you consider
 3 members of protected classes or people of indigent
 4 status. If you can kind of consider those statistics in
 5 compiling your statistics so that we know whether or not
 6 these cases have a disproportionate impact on a certain
 7 or particular community.

8 And just minor points. For instance, page 14,
 9 25, with regard to court staffing, says that we would
 10 like the court staff to know that they should serve as a
 11 liaison to the District Attorney, to law enforcement,
 12 but there's nothing there about Public Defenders.

13 And I think that we are a part of the process.
 14 And I think it's important to, again, reiterate and make
 15 sure that there is a balance here. And to put in the
 16 Public Defender's Office as some -- a party to the
 17 action and a party to the proceedings where the courts
 18 or the court staff would know that they would be a
 19 liaison to all parties I think would be the fairest
 20 thing to do.

21 There are other things that -- I'm running out
 22 of time, but two points, on the firearms issue. 1035s
 23 as a condition of OR I don't believe is constitutional.
 24 I know it's not binding, but Justice Kozinski did have
 25 an opinion in US versus Scott, which was a Ninth Circuit

1 opinion which said that the defendant given a Hobson's
 2 choice of release or 1035 would obviously pick 1035. It
 3 was an unconstitutional mandate or choice. And so I
 4 think the court ought to be mindful of that proposed
 5 solution by the District Attorneys' Association.

6 Also the implication of the Fifth Amendment
 7 with regard to the affidavits that they don't have
 8 firearms any more. The giving over of firearms may not
 9 implicate the Fifth Amendment, but certainly a
 10 declaration required by the court of the defendant would
 11 implicate the Fifth Amendment, and certainly I don't
 12 think that that is the proper solution.

13 Not to tell you how to do your jobs, as far as
 14 law enforcement, but if a law enforcement agency has a
 15 good-faith belief that a defendant has weapons and has
 16 not turned it over in the required period of time, why
 17 couldn't they go to a judicial officer, get a warrant
 18 and search wherever they have to search in order to get
 19 that? Why do we have to change the law and procedure
 20 and violate the Fourth Amendment, Fifth Amendment, Sixth
 21 Amendments to the United States Constitution instead of
 22 dealing with it in a very simple way? Get a warrant.

23 So I don't understand why we would require a
24 declaration and affidavit in violation of the Fifth
25 Amendment.

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1 Same can be said with the 1035. Get a warrant.
2 If you feel that the defendant has firearms, if you feel
3 that the victim is afraid that the defendant has
4 asserted that she or he has seen the defendant with
5 firearms, easy to get a warrant, do the search, and you
6 comply with all the constitutional requirements.
7 I've run out of time, I'm sorry, I've gone a
8 little bit over, and I had a lot more to add. I can be
9 reached at email, niki.solis, S-O-L-I-S, @sfgov.org.
10 I would like to continue to be a part of the
11 process. Some -- there is something in these guidelines
12 that refers to stakeholders and having stakeholders be a
13 part of this process prior to the finalization of it,
14 and I -- you know, I would want to say that as Public
15 Defenders, obviously we're stakeholders, and we want to
16 be a part of the process, we're willing to be a part of
17 the process, and I can give my input further with regard
18 to the points. Thank you.
19 JUDGE KAY: Thank you, Ms. Solis.
20 --o0o--
21 COMMENTS BY MR. FRANK DEL FIUGO
22 JUDGE KAY: All right. Our next speaker is
23 Frank Del Fiugo. You operate A Turning Point.
24 MR. DEL FIUGO: Turning Point, yes. Good
25 afternoon, thank you for having me here today.

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1 I'm going to talk about four specific areas. I
2 was asked to give you will all examples of what I think
3 works in Santa Clara County with our batterers'
4 intervention program and the collaborative processes,
5 and I'm also going to address some concerns I have about
6 the lack of funding -- this has seemed to come up a
7 couple of times, over and over again today.
8 But first of all I'd like to highlight the
9 concern with -- which you had in the guidelines about
10 the probation department and adequate funding.
11 I feel like in Santa Clara County we have a
12 really great relationship with the probation department
13 and our collaboration with them and our collaboration
14 with the courts. The concern that I see, it's -- and
15 it's cyclical; it's probably like any other business --

16 is that probation can get overwhelmed with clients at
17 times, and they don't have adequate probation officers,
18 and they might not get voice mails returned based on
19 them having so much on their plate.
20 When we are -- when the cycle is down with the
21 number of clients and there are enough probation
22 officers, I think our interface with them creates a
23 safer community, holds the clients accountable. It
24 gives us -- it gives the batterers' intervention program
25 a system outside of itself to hold our clients

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1 accountable.
2 So I do have a concern that that seems to be
3 cyclical, and the amount of probation officers with the
4 amount of clients is out of control sometimes. So
5 that's one area I'd like to see addressed, that is
6 addressed in 1203.097.
7 And we really need to remember, if a client is
8 in our program, that's one thing. If a client is in our
9 program once a week and going to a probation officer
10 once a week, once a month, once every 2 months, and the
11 client is going to court once a month or once every 2
12 months, we have a much better chance of the clients
13 completing our programs.
14 So collaboration is very important. And when
15 systems are overwhelmed, it doesn't happen. And when
16 systems are overwhelmed, it creates a victim and family
17 safety issue. And that's one of the major ongoing
18 issues I see in this.
19 So I believe the intent of the law is right on
20 target, with creating a very strong boundary for
21 defendants who are in our programs and their
22 accountability to the programs, to the courts, and to
23 the probation.
24 And when it works, it works great. And when it
25 doesn't, we have kinks in the armor, and that's when

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1 defendants, who -- a number of them are incredibly
2 manipulative and have the ability to get their way out
3 of situations -- when they see the weakness, they find
4 it. So I think boundary is of incredible importance in
5 domestic violence cases.
6 As far as our collaboration with the court in
7 Santa Clara County, I believe that the court system in
8 Santa Clara County, domestic violence judges are

9 incredible. I've seen over the years -- I started this
10 in 1994. The communication with the courts has only
11 increased recently, probably in the past 7 or 8 years.
12 We started -- we meet with the judges twice a year.
13 They have -- all of them have open lines of
14 communication. If we have an issue with a particular
15 client or a particular case that we are concerned about
16 or have a question on a judge's rationale, the judges
17 are really quick to explain it to us.

18 I also have had the experience of judges -- us
19 seeing a case that didn't make some sense to us and it
20 seemed out of sync with the domestic violence court, and
21 a DV judge will go educate another judge on how to
22 handle the situation in the future.

23 So those issues in working with the courts have
24 been great in working with batterers' intervention and
25 holding people accountable.

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1 Also, we have judges on all the committees in
2 our counties, and the -- for example, Judge
3 Pennypacker's on the DV council right now. And again,
4 when we're all together in a meeting once a month or
5 several times a year, and then we have subcommittees and
6 we are seeing each other, we are able to get answers to
7 our questions immediately. And I think that's very
8 important, and I just see a great deal of motivation and
9 passion in the county courts, especially the domestic
10 violence courts, because that's who I work most closely
11 with.

12 Some concerns I have about 1203.097 and cases
13 we see are that -- cases that get reduced to disturbing
14 the peace or get reduced when it appears to us it's a
15 domestic violence case. And people have heard this
16 before from us, but it appears to the program it's a
17 domestic violence case, but we're not in view.

18 So we understand if there's lack of evidence,
19 if there is a lack of person testifying. We understand
20 all those issues. However, when they come to our
21 program and they're in an anger management piece of our
22 program, and we know quickly after 3 or 4 weeks that
23 they belong in a domestic violence program, it's
24 frustrating. I don't know that anything can be done
25 about it, but that's one of the ongoing issues that

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1 happens.

2 What Santa Clara County is doing right now is,
3 when clients are getting referred to the 16-week,
4 they've been traditionally anger management groups.
5 We've now moved towards being accountability groups, and
6 being accountability anger management groups, where we
7 address issues of power and control, we address issues
8 of domestic violence in the groups, if these -- if the
9 case involved domestic violence.
10 So I think that's a Band-Aid, but it's also a
11 way of us trying to come up with an innovative way of
12 addressing these concerns.
13 I also read about sentences that appear out of
14 compliance with the 1203.097, and I can honestly say, I
15 don't think that has happened very often in our county
16 as far as our programs go. Several years ago, we might
17 see a 26-week compromise from a 52-week. And again, if
18 that was brought up in our meetings, and we talked to
19 the domestic violence court judges, they would say, I
20 will call that judge and talk to them and we will
21 address that issue.
22 So that's happened, and it's been pretty --
23 there are some pretty consistent level of treatment
24 across the board in Santa Clara County.
25 So that's probation. I want to move on to

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1 domestic violence community collaboration from a
2 batterers' intervention program perspective.
3 Batterers' intervention, historically, have
4 felt -- have either felt isolated or by choice isolated
5 themselves from the rest of the community. So I think
6 it's really important for batterers' intervention
7 programs to be asked to step up and be involved in the
8 community. What happens is, we get into our offices, we
9 sit there for hours and days at a time, but we're not
10 collaborative in the community, and we're just working
11 with clients. Where do you think our perspective comes
12 from? It comes from clients.
13 And I don't think that's healthy, to just have
14 that one perspective. Since I've been involved in the
15 Domestic Violence Council and the domestic violence
16 community and interfacing with the courts and probation,
17 it's created a whole new light on the importance of
18 collaboration in the community.
19 And again, remember, as we're talking, I'm kind
20 of the baseline in victim and family safety, and we
21 really need to pay attention to, what do we need to do
22 to keep victims and families safe. And that is working
23 in an appropriate healthy way with batterers.
24 I do want to say more about also increasing
25 collaboration in the communities. I notice -- I went to

1 a court meeting a couple of weeks ago, and I noticed
2 that they are in San Jose State trying to get funding
3 for a graduate-level program where they put in a
4 collaborative component of the treatment -- of the
5 social work treatment program. So I think those kinds
6 of things are excellent.

7 I think especially nonprofits, batterers'
8 intervention agencies, even victim advocacy agencies at
9 times might tend to isolate and pull back. And we do
10 need to have involvement with all those agencies in all
11 areas of the domestic violence community.

12 Batterers' intervention -- the next phase,
13 batterers' intervention certification.

14 As much as I don't like it, every year, we
15 become anxious, nervous, frustrated, our employees are
16 on edge. That's a necessary pain for us. And I realize
17 that over the years. I agree that we need to be
18 monitored appropriately by the probation department.

19 I do feel like it's made our program a better
20 program. We do need to be also -- we're asking these
21 men and women who come into our program to be
22 accountable for their actions. And our programs need to
23 be accountable. So I think that's really important to
24 model accountability and be a solid program.

25 And I'll wrap up in a minute. The two things

1 I'd like changed in certification is, more flexibility
2 in treatment modalities. That I do think we need to
3 follow the baseline state law requirements that I think
4 are necessary. But I also think that there needs to be
5 some flexibility in looking at the latest treatment
6 modalities and some other areas. And I know that's
7 different in every county, but that's one area I'd like
8 to see.

9 The second area I'd like to see is the programs
10 have a licensed mental health professional on site. I
11 know that state law I believe requires that we have a
12 person who teach the program, as long as they have the
13 40-hour training, and they are consulting with a mental
14 health professional. And I don't think that's enough.
15 We have people -- this population needs to be treated
16 within the context of state law, but it also needs to be
17 treated within the context of mental health, in a lot of
18 situations.

19 When we have clients with mood disorders, major

20 depression, personality disorders, we have clients with
21 posttraumatic stress disorder from childhood, from being
22 veterans. So we do need to have somebody who's trained
23 to address those issues or address and assess those
24 issues, and I don't know that that happens in all the
25 programs.

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1 And I think Judge Pennypacker also added about
2 progress reports. Progress reports are a necessary pain
3 for us. We do write them every 8 weeks to the probation
4 officers in our county. That's one way we collaborate
5 with them. And the judges get the full 3- or 4-page
6 report in the courts when the client goes for a review.

7 I think the judges have expressed to me that
8 that's vital, as far as them getting an update on what's
9 going on with the client.

10 Any questions?

11 JUDGE KAY: Thanks very much.

12 MR. DEL FIUGO: Thank you.

13 JUDGE KAY: Next we'll hear from Mr. James
14 Rowland, the managing attorney of the DV unit for the
15 San Francisco District Attorney's office.

16 --o0o--

17 COMMENTS BY MR. JAMES ROWLAND

18 MR. ROWLAND: Good afternoon. Long day.

19 On behalf of my boss, Kamala Harris, thanks for
20 inviting me. And it's quite a honor to be here, to be
21 asked to be here.

22 I'm the Managing Attorney of the DV unit in San
23 Francisco. I've done only DV since coming to San
24 Francisco in 2001. I have a varied background, but
25 about half of my time I've been a DA and half of the

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1 time I've been a Public Defender in my legal career, so
2 I bring a perspective from both sides, or at least
3 evidence I can't hold a job, one or the other, but we'll
4 assume not the latter, I hope.

5 It would be actually very easy to just say,
6 well, this is a great report, and sit down, because it
7 is. I was really impressed with how well-thought-out
8 and comprehensive it is. And it covers just about
9 everything.

10 It's quite remarkably good. So -- but there
11 are a couple things I think could be addressed.

12 One is, in the civil section in No. 40, note is

13 made of non-CLETS orders. And that should be pointed
14 out in the criminal side as well and emphasized.
15 Up until a couple of years ago in San
16 Francisco, that was a real issue. Even though there's
17 the Judicial Council form, there's unfortunately a lot
18 of white space there where people can write in all sorts
19 of things. We found that there were custodial orders
20 being written in, and child visitation, when and where
21 to meet and so forth. And those were being attempted to
22 be entered into the system.
23 Of course, the CLETS key puncher has no ability
24 to enter those in. And so what the parties think is
25 going to happen is not going to happen, and certainly

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1 the level of protection that somebody thinks exists is
2 not there. Somebody thinks that, well, the order says
3 that the children are to be transferred at such a time
4 and so forth, that's not in the CLETS order.
5 And the problem is, the police officer at the
6 scene has no idea what's going on, and the police
7 officers are often trained to rely on their printout,
8 not a piece of paper that somebody hands them, with a
9 purported signature, and it says endorsed filed on it.
10 Well, that was then, but has it been updated,
11 the police officer doesn't know, so the police officer
12 has to rely on what his or her machine prints out in the
13 patrol car, which may be greatly at variance from that .
14 So non-CLETS orders can cause a lot of problems
15 and the criminal side as well as on the civil side, and
16 that's a real safety issue, and needs to be emphasized.
17 I think it would be doing a real service there.
18 The other thing, I'd like to follow up to Kate
19 Killeen's remarks about judicial flexibility. And this
20 is also part of Section 50, probation, in the criminal
21 part of the report.
22 And it's a great idea. Probation has to
23 include the 52-week program as outlined, because that's
24 what the legislature said, and so obviously, that is the
25 law, that's the say of the law, and we have to do what

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1 the legislature has prescribed.
2 We know the programs consume a tremendous
3 amount of resources, not only from the funding, but the
4 prosecution of probation violators, how much that costs
5 when they don't complete the program, how much it costs

6 to incarcerate them if they -- if they're given a
7 significant amount of time, and how much time is
8 consumed by DAs, Public Defenders, probation officers,
9 staff, support personnel and so forth. And how much
10 time the courts themselves, through the monitoring
11 process, all of it. It's very cost intensive. And yet
12 that's -- that's really where everything leads.

13 Unless somebody is given a sentence in prison
14 or they're given a flat sentence in county jail, we
15 assume they're going to go into a batterer intervention
16 court, what we call a BIPS. They're going to go into
17 that.

18 Well, that means we're putting most of our eggs
19 in this basket. We want people to succeed. We hope
20 that if they complete the program, that they will be
21 safer to their spouses, to their children, the strangers
22 on the street. That there's a real benefit in doing
23 that. So we want -- we want them to work.

24 We know that a lot of people fail the programs.
25 We know a number of people succeed. I wonder if maybe

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1 that's because the people who succeed often are -- sort
2 of self-select. They're people who find themselves
3 before a judge and say, I'm going to change my behavior.
4 I'm not going to do this, I'm tired of doing this, I
5 want to do something different. And the program is a
6 tool which they jump on to use. They sort of
7 self-select in the success.

8 And my concern is that -- what we do with the
9 other people; whether the programs as now constituted
10 are going to help the larger portion of the 100 percent
11 we hope would complete the programs but don't.

12 And this is no criticism of the very hard work
13 of you people that deal with the batterers every day in
14 trying to get them to change their behavior, but it is a
15 question as to whether or not our present model is the
16 best for every single person every time. Is a 52-week
17 program always the thing to do? Should there be more
18 flexible options?

19 The problem is, I don't think we have the data
20 to answer the question. It's just an open question out
21 there, and with very many potential answers.

22 In San Francisco, psychologist Dr. Joanne
23 McAllister did a study of a number of the BIPS and found
24 that there was quite a variation in the models that were
25 used and in what appeared to be potential success rates.

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1 And so we know with this wide range, there are a lot of
2 different approaches, but we don't really have the data
3 to say, which approach is best?
4 It may be that one or two models are the ones
5 that tend to succeed a lot, and other models tend not
6 to. And it would be a group like this that could be the
7 moving force to have the type of in-depth study -- it
8 would have to be statewide, and perhaps even
9 multi-state, to see what are they doing in Minnesota,
10 what are they doing in Mississippi as well? There may
11 be a gem of a program someplace that nobody's heard
12 about that is absolutely wonderful, but nobody visits
13 Montana to find out type of thing.
14 So maybe this is the type of thing that this
15 body could spearhead that might give us the data,
16 because we need to have a program that is going to do
17 what we hope it does, which is cause the batterer to be
18 less of a battering person.
19 In saying these things, I'm not advocating for
20 any particular outcome. I'm hoping that our present
21 model is the best model and the best of the best of all
22 possible worlds.
23 But if it isn't, we owe it to ourselves to find
24 out, is there a better model, or maybe several better
25 models, which could better serve us in the long run to

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1 do what we really are all here to do, and that is to
2 reduce the level of domestic violence.
3 Thank you for your time.
4 JUDGE KAY: Thank you, Mr. Rowland. Any
5 questions of Mr. Rowland?
6 All right. Judge Morgan?
7 --o0o--
8 COMMENTS BY JUDGE MARY CAROLYN MORGAN
9 JUDGE MORGAN: I preside currently over our
10 domestic violence court, a criminal court in San
11 Francisco. It's the second time I've done that.
12 As presently constituted, our court hears all
13 of the misdemeanor domestic violence cases from
14 arraignment through disposition short of trial. If it
15 can't be disposed of before trial, it's sent to the
16 master calendar court, sent out for trial.
17 Felonies are heard in the general preliminary
18 hearing courts and felony trial courts. However, all
19 misdemeanor and felony cases that have a disposition
20 where someone goes on probation and any of the domestic
21 violence conditions are imposed come back to me, and I
22 supervise all of those cases until probation is
23 terminated or it expires.
24 I say that, sort of a little bit of detail,

25 because I think one function of your Task Force that

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1 would be extremely helpful is to let all the counties
2 know about all the different models of all the domestic
3 violence courts, because I think we think we all know
4 about them, but I think we don't. And it's extremely
5 useful to exchange those kinds of details, because while
6 the essential model might be maintained because of the
7 local culture in each county, every single model can be
8 tweaked. There's always something new to learn.

9 I have a couple comments on some very specific
10 things.

11 First of all, the requirement of 52 weeks of
12 domestic violence counseling.

13 The first question I noticed in the guidelines
14 as well as the Attorney General's report is that it's
15 not always imposed where it should be. I think perhaps
16 in my mind, reasonable minds can differ about that.

17 I would say I've been impressed in San
18 Francisco in my most recent stint in this court that
19 cases where there is proof, there is a disposition of
20 the plea to a domestic violence charge and all of the
21 mandated conditions are imposed, without fail.

22 There are, however, cases in which the victim
23 does not cooperate; however, there is other independent
24 evidence to prove some kind of injury, but not enough
25 evidence to prove the relationship. Which is why the

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1 defendant gets to plead to something like a 242 or a
2 240, or even a 415. Because the proof isn't there.

3 Well, now, we as judges can impose conditions
4 of probation that are reasonably related to the charge
5 for which the person is on probation. If there is no
6 proof of the relationship as defined in the Family Code,
7 how can we impose conditions of probation that are
8 supposed to go with that?

9 So I mean, that's just the way my mind
10 approaches that problem. I'm sure other people with
11 approach it in a different way.

12 I think it may also vary from county to county
13 as to, how does the District Attorney handle these
14 cases? How aggressively does the Public Defender defend
15 these kind of case? Are we just plea bargaining and
16 making things up, making dispositions up, or are we
17 really going very clearly about what the evidence is?

18 And I would say, whenever a case is disposed of
19 in my court where there are not the mandated conditions
20 of probation, and a person pleads, for instance, to a
21 242 or 240, the District Attorney stands up and says
22 exactly why. We have this evidence, we don't have this
23 evidence, and that's why this disposition is being
24 offered.
25 JUDGE KAY: Could it be a lack of evidence of

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1 the crime as well as the relationship, or does it just
2 go to the relationship?
3 JUDGE MORGAN: If there's no evidence of the
4 crime, the district attorney has no compunction --
5 JUDGE KAY: Not no evidence, but may
6 questionable evidence?
7 JUDGE MORGAN: You know, those cases tend to be
8 dismissed. They perhaps are not dismissed until the day
9 of trial. But if there is no other evidence besides the
10 victim, and because there is much less hearsay now
11 because of Crawford, those cases are being dismissed.
12 JUDGE CHATMAN: Judge Morgan, we had this
13 discussion yesterday at our senior training.
14 So you know, as we discussed yesterday, it is
15 the relationship that triggers 1203.097, not the charge
16 or anything like that. So clearly, if the relationship
17 is not there, then 1203.097 cannot be mandated. So I
18 can see a 415, 242, 240 easily being well within the
19 law, because it's not required.
20 So is that what you're addressing?
21 JUDGE MORGAN: Yes, ma'am.
22 I also want to say that I think the idea of
23 taking a standard anger management course, which in San
24 Francisco is 26 weeks, not less, and converting it from
25 sort of standard anger management to something that's

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1 more accountability, I think is an extremely worthwhile
2 endeavor. And I think that's something that the Task
3 Force should encourage.
4 I also want to say something about -- which
5 other people have mentioned. These -- the 52-week
6 standard program is definitely not appropriate for every
7 single person. There are people who have developed
8 mental disabilities, who have Axis I diagnoses, who have
9 cognitive impairments, brain injury. There are all
10 kinds of reasons.

11 So sometimes I actually take somebody out of
12 the domestic violence court and put them into my
13 behavioral health court, where they get intensive case
14 supervision where they have mandated mental health
15 treatment, and that quite frequently goes a whole --
16 goes much farther down the road to protecting that
17 victim and educating or -- not so much educating, but
18 controlling and supervising the perpetrator than a
19 52-week program in which mental health issues are really
20 not satisfactorily addressed at all.

21 So I think that is another thing that is
22 extremely important for the Task Force to address.

23 Criminal protective orders, which require the
24 defendant to move out of the home and have no contact
25 with children, our court regularly, without fail,

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1 imposes a stay-away order on every defendant at the time
2 of arraignment. If there's enough evidence to hold
3 someone on a charge, there's enough evidence as a
4 general rule to issue a protective order.

5 If children are at all involved, there's a
6 stay-away order from the children.

7 Now, that's a pretty big deal to do,
8 particularly in a criminal court. You're not a family
9 law judge, you don't have any information about the
10 kids. So we also routinely check the box that says,
11 this order can be modified by a subsequent order if the
12 defendant seek order of the Unified Family Court.
13 That's extremely important.

14 We also tell the defendant, when you are
15 released from custody, go to the family law court.
16 There's an affirmative encouragement to get people
17 there. We have a wonderful access center that helps
18 people who do not have lawyers so that they can go
19 before a judge without a lawyer, go to mediation. And
20 this is the one place-- maybe the criminal court can't
21 get both parties into some kinds of counseling, but
22 certainly the family law court can. And the children
23 are a wonderful, you know, access point, if you will,
24 for the parents to get into that system.

25 So we really urge people to go get or order for

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1 visitation, and the family law court can make an
2 appropriate order in that regard.

3 JUDGE KAY: The order itself says that it can

4 be modified by the family court?
5 JUDGE MORGAN: Yes. There's a box you can
6 check. Yes.
7 I do not -- even if a victim comes to the
8 arraignment and says, I don't want this order, I
9 routinely impose it. Trying to be as polite as possible
10 to the victim, but making her understand that this is
11 being done for public safety and it's not just a
12 personal issue.
13 That order might or might not be modified at
14 the time of sentencing. That order can always be
15 modified once that person -- if that persons goes on
16 probation, and if the victim comes in after the
17 defendant has been on probation for a while, they're
18 going to a program for a while, been getting
19 satisfactory progress reports, I almost invariably
20 modify that order and do away with the stay-away order
21 and only have peaceful contact orders once that victim
22 comes in and asks me to do that.
23 I will say the District Attorney has a great
24 program for requiring the victim to come in personally
25 to court to make that request. Before the request is

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1 made, she has to go upstairs, talk to a victim advocate
2 so that we're all assured that she knows exactly what
3 the impact is.
4 I think it is extremely important for the court
5 to personally monitor people who are on probation. It's
6 just as important for misdemeanors as it is for
7 felonies.
8 As Mr. Faro indicated, they have to go to an
9 orientation every Thursday, or the first Thursday that
10 they are out of custody, then they have to come back and
11 see me in 2 weeks to show proof that they have enrolled
12 in a program. Then they come back in one month and show
13 that they have completed four session, if that's
14 satisfactory, then they can come back in 2 months, 4
15 months, 6 months, as the year progresses.
16 As soon as there's an unsatisfactory progress
17 report or the person fails to appear in court, the -- if
18 a bench warrant is issued and that person comes back, I
19 typically put that person on weekly progress reports to
20 make sure that things are getting back on truck.
21 And I really would urge the Task Force to make
22 that a best practice among our courts. I realize that
23 it takes up judicial resources, but I find, quite
24 frankly, that it is an extremely important measure in
25 terms of holding people accountable and assuring that

1 victims are safe.

2 We bend over backwards to try to get people to
3 complete this domestic violence counseling. We think
4 it's extremely important, even though I'd be the first
5 to admit the research is not at all conclusive that it's
6 effective. But --

7 JUDGE KAY: You saw the report from Brookline
8 that --

9 JUDGE MORGAN: Yes, I did. Yeah. So -- you
10 know, but it's the only thing that we have. It's the
11 main tool that we're working with, so we put a lot of
12 effort into getting people to comply.

13 And if that means trying to find out what
14 their problems are as to why they're not complying, we
15 try to find out what the problems are, whether it's
16 literacy or mental health or lack of money to pay or
17 child care problems, whatever it is, and then to try to
18 develop resources to help that person comply.

19 Some people just don't go. If that's the case,
20 we have a great alternative, which our sheriff has a
21 nationally acclaimed violence prevention program in
22 custody that focuses on domestic violence, and I have no
23 compunction about sending someone to jail for 6 months
24 plus so that they can do their domestic violence
25 counseling in custody.

1 Finally, I want to say I think one of your most
2 important recommendations, and this is what other people
3 have said, is that people in the system need to
4 collaborate with each other.

5 I completely agree with Ms. Solis. I think the
6 Public Defender needs to be at the table a whole lot
7 more, one, so that the defense bar is more educated;
8 two, that we're more educated.

9 I thought what she said was incredibly
10 insightful about what the victim sees in the audience
11 when that -- when the husband or boyfriend is brought
12 out at the time of arraignment. Is that person treated
13 harshly? Is that person treated courteously? Does the
14 system appear fair? Are we all of a sudden making her
15 not want to cooperate with the prosecution because, you
16 know, she has the sense that we are abusing her partner?
17 And it's still part of her family.

18 So I think that, you know, we all have a lot of
19 things to learn from each other, and I think that we can
20 achieve our goals a whole not more easily and quickly
21 when we all talk to each other on a regular basis.

22 JUDGE KAY: Thank you.

23 JUDGE MORGAN: You're welcome.
24 JUDGE KAY: Any questions for Judge Morgan?
25 I would like to thank all of you who have

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1 addressed us here today with your comments. I assure
2 you they will be carefully considered. We have all
3 taken copious notes, and we've heard a lot of good
4 ideas. Thank you.
5 We will now move directly to the general public
6 remarks. Those of you who have signed up to speak
7 during the public testimony session, I'll be calling you
8 up in the order in which you have signed up.
9 Three of you have signed up. And one of you
10 has actually written us a letter, and we've responded to
11 it and are looking forward to your remarks.
12 It's important to understand that the Task
13 Force is not a regulatory or investigating body. We do
14 not have any jurisdiction or oversight authority. We're
15 thus unable to review or take action or intercede on
16 your behalf in individual cases.
17 That doesn't mean we are not interested in your
18 cases. We are very interested in hearing your input
19 regarding ways to make improvements in the overall
20 administration of justice in this area.
21 --o0o--
22 COMMENTS BY MS. ROSETTA EGAN
23 JUDGE KAY: Are you Ms. Rosetta Egan?
24 MS. EGAN: Yes, I am. And I'm really happy to
25 be here, although it's a very sad occasion that brought

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1 me here. I'm really, really happy to be here.
2 I am so thrilled. I didn't really have an
3 opportunity to read the entire -- the entire work that
4 you've provided here. I don't know, is it -- the
5 projected happenings. I'm really, really happy with
6 them, because these are all the things that were missing
7 when my daughter was murdered.
8 My daughter, and I passed her picture around,
9 Patricia Kualapai, was murdered on February 22nd, 2001,
10 by her ex-husband, after he stalked and beat her for
11 about 4 or 5 months.
12 And so her situation, quickly, was that she
13 lived in the City of Alameda, and I lived in Oakland.
14 He lived in Vallejo. She went to school in Berkeley.
15 So that's -- you know, two whole counties right

16 there. And, I don't know, four jurisdictions.
17 So it was difficult for her to get the
18 information out to everyone who needed to have it: The
19 police at UC Berkeley where she went to school; the
20 Solano County Sheriff; the Vallejo Police Department;
21 Alameda County Sheriff; the Oakland Police Department;
22 the Alameda Police Department. It was -- she was
23 running in a maze trying to keep up with everything.
24 And unfortunately, she wasn't able to protect
25 herself. And I didn't come here to blame anybody, you

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1 know, because he wanted to kill her, and that's the
2 bottom line. I saw this story on the news the other day
3 about Ms. Hill McCall in Oakland, and it was deja vu all
4 over again. Here is a woman who was living in Vallejo,
5 goes to church in Oakland, and she couldn't -- the
6 Oakland police knew nothing about her situation. She
7 had had a restraining order on him since February, and
8 they knew nothing about it.
9 So this is my question for you: How do you
10 expect to get all these jurisdictions communicating with
11 each other?
12 It also reminds me of that story of Polly
13 Klaus. She was in the trunk of the car, and the deputy
14 sheriffs didn't know that she had been kidnaped.
15 And so -- and I want to say that, you know, the
16 Amber -- Amber --
17 JUDGE KAY: Alert?
18 THE WITNESS: Yeah. That really works so well.
19 I mean, I don't know how many lives had been saved by
20 that.
21 And you could save lives, too. If we could
22 just put our heads together and come up with some better
23 ideas.
24 Another idea that I really like is the Family
25 Justice Center in Alameda County, the one-stop shop.

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1 That's terrific. Because I believe, now -- I haven't
2 had to use it, but I believe that it Trish had gone in
3 there and said, I'm going to school in Berkeley, I live
4 here, I -- you know, can you help me? And also, she was
5 looking for a place to stay, and there was no room at
6 the inn. Nobody had a spot for her. The Safe Place in
7 Oakland didn't. And she called Contra Costa County, and
8 they offered her a motel on some, you know, sleazy strip

9 in Concord, and a motel room there for her and her two
10 kids, and then she could go to Berkeley and take them to
11 school in Alameda and -- you know, I mean, there has to
12 be a better way.

13 And I realize that since we're spending all our
14 money in Iraq, we have nothing for the people in this
15 country. So it's not going to be easy for you to put
16 these ideas into effect. It's going to be difficult.
17 Because you're going to have problems getting the money,
18 I'm sure of that. I have no doubt.

19 And regarding firearms, my daughter's murderer
20 had a storage unit filled with firearms. None of them I
21 believe were registered. They didn't -- they were not
22 on any books anywhere. So what are you going to do
23 about people who have guns illegally? How are you going
24 to address that?

25 Okay. Mental health. I really like what the

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1 gentleman said about mental health. It's very important
2 to include mental health in this situation. And
3 posttraumatic stress disorder. My daughter's batterer,
4 murderer, was a battered child. And he, you know, was
5 beaten to within an inch of his life, you know,
6 regularly. And so when he grew up to be a man, or -- a
7 man, he continued that -- he identified with the
8 perpetrator and used my daughter as his victim.

9 And -- okay. I also heard somebody say, oh,
10 it's too bad the men don't have any money like, you
11 know, there's 800 of them and only 100 of them have
12 jobs.

13 Well, my daughter's batterer, you know, had a
14 hustle going. He worked at the Chevron refinery, and he
15 was best friends with the union guy there. So they
16 would keep him under the books, off the books, and they
17 would move him around from place to place so the
18 District Attorney couldn't catch up with him in order to
19 get child support for her. For the child.

20 And that was the issue here with these two, was
21 the child support. He didn't want to pay it. And she
22 needed it. And her son needed it.

23 And another thing regarding the treatment, you
24 know, the 52 weeks or the 26 weeks of, you know,
25 learning how not to be a batterer, it's -- I totally

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1 agree with the gentleman who said that we cannot make

2 this a cookie-cutter plan. You know, people have
3 different issues and different problems. And so if I
4 was their therapist -- I am a psychiatric nurse, by the
5 way -- I would have to deal differently with everyone
6 that comes before me. You know, everyone that comes to
7 see me or that I'm taking care of in the hospital. I
8 can't treat them all the same way.

9 The -- you know, the hardest thing for me at
10 the time of the murder was, I felt like I was being
11 criminalized by the justice system. My daughter was
12 involved with a former Hell's Angel. That's the man who
13 murdered her. But she wasn't a crook or a thief or a
14 liar or any of that stuff. She wasn't a criminal. She
15 was a senior at UC Berkeley majoring in sociology. She
16 had straight As and a full scholarship, and she had two
17 children at home that she took care of, and her house
18 was immaculate, and you could go over there any time of
19 date or night, and everything would be in order. She'd
20 fix you a cup of coffee or whatever.

21 I couldn't even do that. But she did it, and I
22 am very proud of her, I will say that.

23 But afterwards, I felt like people were looking
24 at us like, you know, what are these people up to, you
25 know? I live around the corner from the Hell's Angels

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1 in Oakland, but I didn't even know they were there until
2 I was living there for 5 years. You know, and so that's
3 the thing. And I felt victimized and criminalized all
4 over again.

5 I did not get custody of her children, even
6 though she left a will nominating me as the person she
7 wanted to raise her children. And, you know, I'm a
8 psychiatric nurse, and I know how it works if you -- if
9 they don't want you in the -- you know, if you are not
10 the favored one, you're going to get creamed, and that's
11 what happened to me.

12 I never had a chance. I never had a chance to
13 get those kids. They locked me out from the first day.

14 One reason I believe is because the person who
15 got them was a former in-law of my daughter's who had a
16 boyfriend who was a cop that knew all the cops in
17 Alameda. So when they went there after the murder, they
18 got the kids and went home with them, and I never saw
19 them again. I've seen them about seven times since
20 2001, and I used to see them five times a week. I
21 cooked their dinner the night before the murder. I read
22 them their bedtime stories and gave them their bath and
23 put them to bed. I haven't done anything like that
24 since then.

25 The other question I have is, how do you

1 determine what is a felony and what is a misdemeanor?
2 He broke into her house, clearly violating the
3 restraining order, put a knife to her throat, cut all
4 her telephone wires, said he was going to kill her,
5 asked her if she wanted a gun or a knife. And that was
6 a misdemeanor. Misdemeanor -- vandal -- what do they
7 call it, like when you're being a brat, you know?
8 That's what they charged him with, being a brat.
9 Another question I have is, with her, they knew
10 each other for a long time. However, things just
11 escalated in the last 5 months to the point of the
12 murder. You know, and if it had been going on longer
13 and, you know, and a more slower escalation, probably
14 this could have been prevented.
15 But I know that's the same thing that happened
16 to Ms. McCall. He suddenly started escalating and
17 violating the restraining order, and next thing you
18 know, you know, he's shooting her down in the street.
19 And so my question is, you know, do you have
20 any ideas on how to deal with situations when things are
21 just rapidly escalating?
22 Okay. And what about inviting victims to your
23 meetings? Nobody told me about this. I found it on
24 line. I don't have a foundation or -- you know, I'm not
25 hooked up with any group. Nobody told me about it. I

1 had to find out about it myself.
2 And I do -- I do want to say, though, that I
3 look forward to the seamless process you guys have
4 presented here, and I hope to God that you can do it, I
5 really do. You will have my hundred percent backing.
6 And, you know, finally, regarding education and
7 violence, we need to start in the schools when the kids
8 are really little, get those little boys, and you start
9 talking to them then. And you bring in the sympathetic
10 men now.
11 I just want to thank you for letting me talk
12 today.
13 JUDGE KAY: Thank you, it was a privilege.
14 THE WITNESS: Sorry?
15 JUDGE KAY: I said it's a privilege. Thank
16 you.
17 THE WITNESS: Oh, my God. For me too, thank
18 you.
19 --o0o--

20 COMMENTS BY MS. OLIVIA HORGAN
21 JUDGE KAY: Next we have Olivia Horgan.
22 MS. HORGAN: Good afternoon. My name is Olivia
23 Horgan. I'm Staff Attorney with CORA, which stands for
24 Community Overcoming Relationship Abuse.
25 We are the only agency in San Mateo County

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1 solely dedicated to serving survivors of domestic
2 violence with an integrated program that includes
3 emergency shelter, counseling, crisis counseling as well
4 as a legal program. It's an honor to have your
5 attention this afternoon. I know it's been a long day,
6 and I'm honored and inspired by the minds here in this
7 room today that are committed to improving the courts'
8 response to this very important issue.
9 I just have two quick points to bring up this
10 afternoon regarding restraining order hearings.
11 And the first is that we would fully support a
12 Recommendation 14 in the restraining order section that
13 states that litigants should leave a restraining order
14 hearing with the written orders in hand.
15 That happens now in our county in San Mateo, in
16 part through a collaboration with CORA and the family
17 law facilitators. We help staff that calendar so that
18 all litigants leave with those papers in their hands the
19 same day.
20 I understand that in other counties,
21 unfortunately, this is not always the case. Sometimes
22 litigants must prepare the court's orders themselves,
23 which is certainly a challenge -- sometimes it's a
24 challenge as an attorney to draft the court's orders
25 into writing. To have self-represented litigants do

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1 that often, if they're not speaking English as a first
2 language, is certainly challenging. They may go days or
3 weeks without having that written court order, which
4 creates a burden not only for the victim, but for law
5 enforcement, for the perpetrator, so that there's not
6 clarity for the parties.
7 So I think it's a pretty simple thing that can
8 happen in all counties to streamline that and make sure
9 that that happens.
10 My second point would be to agree with
11 Recommendation 16 to ensure that child and spousal
12 support orders are made when requested in restraining

13 order hearings.

14 This often happen when we're able to represent
15 a litigant. But when they're representing themselves,
16 it often doesn't happen. This was mentioned earlier in
17 the remarks from Bay Area Legal Aid.

18 And one suggestion that was offered that I
19 heard this afternoon from Bay Area Legal Aid is, perhaps
20 this process could be streamlined or made easier for
21 everyone involved by having the Department of Child
22 Support Services involved. A case worker perhaps could
23 be present when the litigant is applying for a
24 restraining order so that that child support case can
25 start at the same time.

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1 Additionally, perhaps a child support -- a DCSS
2 attorney could be present at the restraining order
3 calendar and could help assure that those orders are put
4 in place. It helps ensure financial stability for the
5 children. It also reduces the necessity to return to
6 court and invoke various systems at a later time when it
7 could be taken care of perhaps in one hearing, which I
8 think would be best for all parties.

9 So I -- again, thank you so much for the
10 opportunity to speak. I believe with the cooperation
11 and the leadership of the courts, that we can improve
12 victim safety and promote batterer accountability.
13 Thank you.

14 JUDGE KAY: Thank you.
15 Our last speaker is Katherine Caballero.

16 --o0o--

17 COMMENTS BY MS. KATHERINE CABALLERO

18 MS. CABALLERO: I'm nervous. Thank you so much
19 for being here and letting us come, let us come and
20 talk. And I know you received my letter, and I received
21 a few back.

22 As far as your reports, three of them,
23 thoroughly reviewed, annotated, highlighted, and I used
24 it as one of my policy analysis papers.

25 I think that we have some higher powers on our

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1 side going on right now, because the only difference
2 between me and her daughter -- there's two: Number one,
3 I'm alive; and she kept a clean house. I don't have
4 time. I'm a senior at UC Davis, and I had a high GPA.
5 What happened -- I got my first B last quarter. So if

6 that's the worst that can happen to me from this point
7 on, I honestly think that maybe I can be a catalyst for
8 change.
9 I don't expect any of you to do anything for
10 me, but if there's going to be a voice to speak for what
11 the victims are going through, I'm really a good voice
12 that speaks, because I don't let things go.
13 And from that, I'm being treated by the
14 District Attorney, I'm being treated by police
15 departments, and I'm being treated by the court, as a --
16 oh, what was the word -- I'm being treated harshly. And
17 I'm a bother, if I would just go away. And I don't go
18 away. Lieutenant Chaplin, the chief of police -- I
19 received lots of responses from the police department
20 about my letter. And they wanted to know, have I heard
21 from anybody else. So they're reviewing, and they're
22 looking, and we have problems here.
23 Accountability is the largest thing we need.
24 He still has his two guns. Somebody else here mentioned
25 that they're very manipulative. Oh, very manipulative.

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1 I've been to court seven times -- seven times. He
2 hasn't even shown up. Because he can submit this
3 documentation that I am -- I want to backtrack.
4 When I insisted that the police officers go to
5 his house and just question him where these firearms
6 were, it was -- I was bothering them, Sergeant Fletcher
7 and Officer Buckmeyer, and they said they couldn't,
8 there's no warrant, it isn't in CLETS. It's supposed to
9 be in the CLETS. We just finished court two days
10 before. Their whole system was screwed.
11 I said, I have the documentation. Do you want
12 to see it? I have the firearm registration. Do you
13 want to see it? No.
14 So they went over there, and they asked the --
15 my accused what's going on with this, why does he still
16 have firearms. And he said, I don't -- one firearm, he
17 doesn't know where it's at -- this is his testimony to
18 the officer -- and the other firearm, his mom has. His
19 mom lives about 20 miles away. To me that is control.
20 I have also read, Gwinn -- Casey Gwinn's
21 articles. He wrote some fascinating articles. I used
22 that too as my policy analysis about firearms just
23 recently.
24 JUDGE KAY: He spoke with us last week.
25 MS. CABALLERO: He does some wonderful work in

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1 San Diego, and it was only through my research that I
2 discovered that.
3 And the policy of the batterers'
4 accountability. Everybody acknowledges that this is
5 bad, this is wrong, it's beneath them. And mine has
6 shown, he has control.
7 There was a case that the DA any San Diego did,
8 and it mirrors mine exactly. The only difference is, is
9 they prosecuted the one in San Diego a year ago. My guy
10 is still trolloping around, and he's saying that he's an
11 ex-police officer.
12 How does police officer status and a wartime
13 Iraq soldier, wounded, make it into a police report and
14 conclude he doesn't have any weapons, when the DOJ shows
15 that he has them, and his mother on the telephone says,
16 yes, they're at my house?
17 He's using his status as credibility. Hmm-mm.
18 I just -- it doesn't feel right. Just hold him
19 accountable. And nobody's holding him accountable.
20 So what I would like to suggest is that
21 verbally, the judges tell the restrained and the accused
22 that he must turn in his firearms. At the time of my
23 hearing, I told the judge that he has two more weapons,
24 and then she said it's a felony. Yes. And those are on
25 our orders that I had mentioned that.

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1 And he says, no, no, no, I don't have them.
2 Well, I knew in March I sent him a certified to his keys
3 because he left the keys to the lockbox to his weapons
4 and my house. So now he's telling the police that they
5 are -- he doesn't -- he gave one away, or he didn't --
6 he sold one in 1987, and his parents had another one in
7 1992? And 6 months ago, I'm sending him a certified and
8 we're talking about it via email?
9 Nobody's listening to me. And I know that I
10 make sense.
11 His doesn't, because he's an ex-police officer.
12 Ex-police officers know their responsibility -- or they
13 should know the responsibilities of firearms, and I
14 don't think any reasonable officer, responsible officer,
15 would ever have a firearm out there floating around.
16 I -- it's -- again, it doesn't make sense.
17 I contacted the District Attorney, and they
18 cannot -- they say I need to go to the police. However,
19 I know that the Civil Procedures and Family Code and
20 Penal Code, I have the number here, states that if the
21 District Attorney sees that there's a violation that
22 they can perceive and prosecute without a police report,
23 I -- I don't understand why Sacramento County didn't
24 following through. And believe me when I tell you I

25 have names, and I have dates, and I have times, and I

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1 keep very good records.

2 So if that's happening to me, how many other
3 people is that happening to? I don't think it's a lack
4 of education. I think it's a lack of -- they just don't
5 care. There's too many highly educated people here.
6 Highly intelligent, for a lack of education.

7 I personally learned this myself, throughout
8 the last few months. I wasn't aware of it until I
9 received -- I found myself enthralled in the domestic
10 violence area, and I reached out to the courts, and I
11 realized I got consistent inconsistency. I like that
12 term. I've been using it.

13 It's not the education. I learned it well
14 enough in a very short time. These police officers,
15 these District Attorneys and these judges just aren't
16 caring. We don't need any more education. They're
17 already taking classes of it, I would think, or they
18 should.

19 The final conclusion after the police told me
20 to go to the DA and the DA told me to go to the courts,
21 and the courts told me to go to the police, I got
22 circular, I decided, okay, I'll go to the courts and
23 I'll file a contempt.

24 I represent myself. I went to advocacy, I went
25 to King Hall at UC Davis, there's a family court area

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1 there.

2 People are not prepared to handle the level
3 that escalates to mine. But it's at my level that we
4 die. Okay? And that's okay. They're handling the
5 masses, and that's -- all that I ask is, I'm walking
6 through the water, just hear me. Nobody's hearing me.

7 It gets worse now. I ended my letter, I think
8 it was like a 4-page letter, and I ended it with, I
9 decided that I'm going to file contempt charges, and I
10 did. And I went to Yolo County. That's where this is
11 out of. And my wounded soldier wartime hero was again
12 unable to make it. But he is using that claim like he
13 used in the -- to the police officers.

14 And the judge wanted -- his attorney mentioned
15 that he's being deployed, and I know he's not. So the
16 judge ordered 2 weeks later a deployment order, and the
17 judge told me that he's familiar with deployment orders.

18 He's seen one, everybody gets one.
19 So 2 weeks later I go back to court, and she
20 hands him a memo, from not even a commanding officer,
21 giving a medical evaluation while he's in El Paso, Texas
22 and cannot state when he's going to return.
23 And I said, Your Honor, this is a memo. This
24 isn't a deployment order. And it even states that I
25 objected to it.

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1 I don't realize I'm doing all the right things
2 and saying all the right things, but -- that's according
3 to law, until later, when I go to the appeals process.
4 The judge looked at me, and he said, how dare
5 you. This is a wounded soldier. He spent time in
6 Vietnam. And he knows about how difficult it is coming
7 back. Something to that extent. Not verbatim for -- my
8 mouth -- I'm just shocked.
9 So he's not even being held accountable for his
10 two firearms. In this judge's courtroom, a man can go
11 to war, he can be injured, he can come home, he can
12 abuse women, he can receive a restraining order, he can
13 show that he has two firearms from the Department of
14 Justice printout, he can have a court hearing, he
15 doesn't have to show up for court, and the case can be
16 closed without a hearing. Simple as that. It's all in
17 court records.
18 So it got worse, and I'm sorry to say.
19 JUDGE KAY: Ms. Caballero, I hate to be the one
20 to have to do this, but we have to wrap this up, because
21 people here have get on airplanes, and I appreciate
22 you've come a long way.
23 MS. CABALLERO: I understand. Okay. Thank you
24 very much for your time, and I will brief you later as
25 soon as this is done. Have a safe drive home.

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1 JUDGE KAY: Thank you very much.
2 On behalf of the Task Force I would like to
3 thank everyone who participated in testimony's hearing
4 it. Your testimony will be very helpful to us as we
5 consider recommendations for improving it the practices
6 and procedures in domestic violence cases.
7 Thank you all again. We are adjourned.
8 (Time noted, 3:59 p.m.)
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